

**II. COMMITTEE ACTIONS AND FILINGS OF  
THE PARTIES PRIOR TO THE AUGUST 4,  
2010 HEARING ON PRE-TRIAL MOTIONS**

**a. Discovery Matters**

**iv. Motions for Assistance in Securing Discovery  
from Third Parties**



**In The Senate of the United States  
Sitting as a Court of Impeachment**

<b>In re:</b>	)
<b>Impeachment of G. Thomas Porteous, Jr.,</b>	)
<b>United States District Judge for the</b>	)
<b>Eastern District of Louisiana</b>	)

**JUDGE G. THOMAS PORTEOUS, JR.'S MOTION FOR  
ASSISTANCE IN SECURING DISCOVERY FROM THE  
METROPOLITAN CRIME COMMISSION**

**NOW BEFORE THE SENATE**, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and respectfully requests the assistance of the Senate in securing discovery materials from the Metropolitan Crime Commission. In support, Judge Porteous states the following:

1. The Metropolitan Crime Commission, Inc. is a "non-profit, privately funded, citizen's organization dedicated to exposing and eliminating public corruption and to reducing the incidence of crime and improving the administration of justice in order to improve the quality of life for citizens in the Baton Rouge and New Orleans metropolitan areas and throughout Louisiana." See <http://www.metropolitancrimecommission.org/> (website for the Metropolitan Crime Commission).

2. In 1994, the Metropolitan Crime Commission opened an investigation into Judge Porteous prior to his confirmation by the United States Senate. As part of this investigation, the Metropolitan Crime Commission interviewed Judge Porteous. The Metropolitan Crime Commission forwarded certain information that it received to the

Department of Justice. According to the Metropolitan Crime Commission, they have an “extensive file” on Judge Porteous with “intelligence reports” dating back to June 1993. (See Letter from Metropolitan Crime Commission, dated March 24, 2004, attached as Exhibit 1.)

3. The articles of impeachment against Judge Porteous allege a concealment of conflicts of interest in connection with his prior service as a state judge in Louisiana. Moreover, the witnesses called by the House of Representatives during its impeachment proceedings specifically raised the distinction between issues known before the confirmation and issues concealed from the Senate and its investigators. Thus, the question of what was known before Judge Porteous’s confirmation is highly material to any defense at his Senate impeachment trial.

4. Only a small number of documents relating to the Metropolitan Crime Commission have been produced to the defense.

5. In the Hastings and Nixon Impeachment trials, defense counsel for the accused requested the assistance of the United States Senate in acquiring discovery from third-party sources. A procedure was developed to permit such discovery, including from the Department of Justice. In those cases, the Chairman of the Senate Impeachment Trial Committee submitted a letter requesting that the third-party produce the requested discovery. (See Letter from Senator Wyche Fowler, dated July 18, 1989, attached as Exhibit 2.) Senate personnel then reviewed the materials and designated for production to counsel from the accused those materials that were deemed relevant to any article of impeachment or asserted defense.

6. Judge Porteous seeks the production of the following materials:

- a. All material in the possession of the Metropolitan Crime Commission that references or relates to Judge Porteous or the underlying allegations in this impeachment.
- b. All material maintained by the Metropolitan Crime Commission that references or relates to Louis or Lori Marcotte and/or Bail Bonds Unlimited.
- c. All material maintained by the Metropolitan Crime Commission that references or relates to the setting, modifying, and/or splitting of bonds.
- d. All material maintained by the Metropolitan Crime Commission that references or relates to allegations of improper expungements of convictions by Judge Porteous or judges in Louisiana.
- e. All material maintained by the Metropolitan Crime Commission that references or relates to Jacob Amato or Robert Creely.
- f. All material maintained by the Metropolitan Crime Commission that references or relates to gifts, money, or other items of value received by judges, magistrates, or other judicial officers in the Jefferson Parish Courthouse.
- g. All material forwarded by the Metropolitan Crime Commission to the Department of Justice or the Fifth Circuit Court of Appeals relating to the investigation of Judge Porteous.

7. Because new counsel has only recently been added to this case and because the evidentiary hearing in this matter is fast approaching, Judge Porteous seeks the immediate assistance of the Senate in procuring these materials. In prior cases, defense counsel initially corresponded with third-parties, received correspondence in return rebuffing their requests for materials, filed motions with the Senate for assistance, and then waited for the third-parties to comply. For example, in the case of Judge Nixon, this process took over two months – an amount of time that current defense counsel simply do not have given the impending trial schedule in this matter. In an effort to avoid

unnecessary delay, Judge Porteous seeks the immediate assistance of the Senate in resolving this issue.

Alternatively, Judge Porteous suggests that, due to the truncated timeframe, that all of the requested material be produced directly to Judge Porteous and that Judge Porteous enter into an appropriate protective order regarding the material. The relevance of these categories of discovery are obvious. Judge Porteous will agree not to discuss or disclose such material absent use at the evidentiary hearing itself. Such a process would allow for an expedited review and avoid any delay of the trial.

WHEREFORE, Judge Porteous respectfully requests that the Senate impellent a procedure to ensure that relevant materials from the Metropolitan Crime Commission be made available to Judge Porteous.

Respectfully submitted,

/s/ Jonathan Turley

Jonathan Turley  
2000 H Street, N.W.  
Washington, D.C. 20052  
(202) 994-7001

/s/ Daniel C. Schwartz

Daniel C. Schwartz  
P.J. Meitl  
Daniel T. O'Connor  
BRYAN CAVE LLP  
1155 F Street, N.W., Suite 700  
Washington, D.C. 20004  
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.  
United States District Court Judge for the  
Eastern District of Louisiana

Dated: June 27, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – [abaron@seyfarth.com](mailto:abaron@seyfarth.com)

Mark Dubester – [mark.dubester@mail.house.gov](mailto:mark.dubester@mail.house.gov)

Harold Damelin – [Harold.damelin@mail.house.gov](mailto:Harold.damelin@mail.house.gov)

Kirsten Konar – [kkonar@seyfarth.com](mailto:kkonar@seyfarth.com)

Jessica Klein – [jessica.klein@mail.house.gov](mailto:jessica.klein@mail.house.gov)

/s/ P.J. Meitl

# Exhibit 1



# **METROPOLITAN CRIME COMMISSION OF NEW ORLEANS, INC.**

1615 POYDRAS STREET, SUITE 1060  
NEW ORLEANS, LA 70112

TELEPHONE 504/524-3148 • FAX 504/566-0658 • [www.metrocrimeno.org](http://www.metrocrimeno.org)

March 24, 2004

Mrs. Jan Mann  
U.S. Attorney's Office  
501 Magazine Street  
New Orleans, LA. 70130

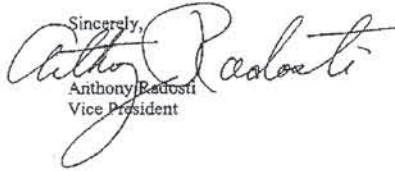
Re: Judge Thomas G. Porteous, Jr.

Dear Mrs. Mann:

The Metropolitan Crime Commission (MCC) has an extensive file on Judge Thomas G. Porteous, Jr. The intelligence reports date back to June 23, 1993 and continue to the present.

The MCC investigation of Judge Porteous and Aubry Wallace is disturbing. In short, Judge Porteous did a favor for Louis Marcotte and altered the conviction of Aubry N. Wallace.

The MCC's file on Judge Porteous is available if you need additional information. I can be reached at 524-3148.

Sincerely,  
  
Anthony J. Radosti  
Vice President

PORT000000533

## Exhibit 2

**United States Senate**  
WASHINGTON, DC 20510

July 18, 1989

John C. Keeney, Esq.  
Deputy Assistant Attorney General  
Criminal Division  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Keeney:

As Chairman of the Senate Impeachment Trial Committee on the Articles of Impeachment against Judge Nixon, I write to request the Department's assistance in the Committee's efforts to assure that Judge Nixon receives a fair trial in the Senate. The Committee has determined that it would make a useful contribution to the trial process if the Department were willing to permit the Committee, through its staff, to review the documents (excluding grand jury materials governed by Rule 6(e)) in the possession of the Department, including those possessed by the Federal Bureau of Investigation, that were requested by Judge Nixon in his June 1, 1989 letter to the Attorney General, which was the subject of your response on June 21, 1989.

The review would be consistent with that conducted in the case of the Hastings impeachment matter. That is, the focus of the review would be to determine if there is evidence that the investigations were conducted in a manner intended to mislead a court or trier of fact as to Judge Nixon's guilt or innocence. In the event that it is determined that particular documents should properly be made part of the pending impeachment proceedings, and accordingly made available to the parties for use at trial, the committee would hear from the Department prior to disclosing any documents that you believe contain particularly sensitive matters, so that we may address any continuing concerns that you have. No documents or portions of documents would be made available to the parties without the consent of the Department.

Your expeditious response to this request would be most helpful to the committee in attempting to complete discovery by July 31st.

Sincerely,

  
Wyche Fowler, Jr.

**In The Senate of The United States  
Sitting as a Court of Impeachment**

	)
<b>In re:</b>	)
<b>Impeachment of G. Thomas Porteous, Jr.,</b>	)
<b>United States District Judge for the</b>	)
<b>Eastern District of Louisiana</b>	)
	)

**JUDGE G. THOMAS PORTEOUS, JR.'S MOTION FOR ASSISTANCE IN  
SECURING DISCOVERY FROM THE AMERICAN BAR ASSOCIATION**

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and respectfully requests the assistance of the Senate in securing discovery materials from the American Bar Association. In support, Judge Porteous states as follows:

1. The American Bar Association ("ABA") is a "voluntary professional association" made up of "more than 400,000 members" that "provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public." See <http://www.abanet.org/about/> (website for the ABA).

2. "Since the Eisenhower administration," the ABA, through its Standing Committee on the Federal Judiciary [(the "ABA Standing Committee")], "has conducted peer reviews of potential federal judicial nominees."

See [http://www.abajournal.com/magazine/article/a\\_proud\\_tradition/](http://www.abajournal.com/magazine/article/a_proud_tradition/) (article dated April 1, 2010). "Starting with responses of prospective nominees to a Senate Judiciary Committee questionnaire, the [ABA Standing C]ommittee conducts in-depth research and

confidential interviews with lawyers and judges who have personal knowledge of a potential nominee's background." *Id.*

3. On June 28, 1994, prior to Judge Porteous's nomination to the federal bench, the U.S. Department of Justice sent a letter to the ABA Standing Committee requesting that it conduct a background investigation and prepare a "formal report" concerning Judge Porteous. *See* Exhibit 1 (labeled Port000000066).

4. Between June and August of 1994, the ABA Standing Committee, led by Circuit Representative Sylvia H. Walbolt, Esq., investigated Judge Porteous's background and fitness to serve as a federal judge.

5. On or before August 24, 1994, the ABA Standing Committee "preliminarily found Judge Porteous qualified for appointment" to the federal bench, which finding the Attorney General relayed to the President. *See* Exhibit 2. Shortly thereafter, on August 30, 1994, the ABA Standing Committee finalized its opinion concerning Judge Porteous and reported to both the Justice Department and the Senate Judiciary Committee that it was "unanimously of the opinion that Honorable G. Thomas Porteous, Jr. is Qualified for appointment as Judge of the United States District Court, Eastern District of Louisiana." *See* Exhibit 3 (labeled Port000000062-64).

6. The articles of impeachment against Judge Porteous allege a concealment of conflicts of interest in connection with his prior service as a state judge in Louisiana. Moreover, the witnesses called by the House of Representatives during its impeachment proceedings specifically raised the distinction between issues known before Judge Porteous's confirmation and issues concealed from the Senate and its investigators.

Thus, the question of what was known prior to Judge Porteous's confirmation is highly material to any defense at his Senate impeachment trial.

7. Only a very small number of documents relating to the ABA Standing Committee's investigation of Judge Porteous have been produced to the defense.

8. In order to obtain additional such material, Judge Porteous's counsel's support staff contacted the ABA and inquired whether it would provide copies of the reports prepared, and materials collected, in connection with the ABA Standing Committee's investigation concerning Judge Porteous. An ABA representative declined to provide the requested materials voluntarily, noting that such materials are typically not released to the public.<sup>1</sup>

9. Pursuant to the request of the Senate Impeachment Trial Committee Staff (made during a June 29, 2010 conference call with counsel for all parties), counsel for Judge Porteous further sent a formal letter request to the ABA. *See* Exhibit 4. Should the ABA reverse its initial indication and provide the documents requested voluntarily, Judge Porteous will so notify the Committee.

10. Having been unable to otherwise obtain materials from the ABA, Judge Porteous now seeks the Senate's assistance in obtaining the production of the following materials:

- a. All materials in the possession of the American Bar Association, including the American Bar Association's Standing Committee on the Federal Judiciary, that refer or relate to Judge G. Thomas Porteous, Jr., including without limitation any information or evidence gathered, reports prepared (in either draft or final form),

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<sup>1</sup> *See also* [http://www.abajournal.com/magazine/article/a\\_proud\\_tradition/](http://www.abajournal.com/magazine/article/a_proud_tradition/) (article dated April 1, 2010, noting that the ABA Standing Committee "publicly provides an explanation for a rating only if requested by the Senate Judiciary Committee.")



or opinions rendered concerning Judge Porteous's fitness to serve on the federal bench.

11. Assisting Judge Porteous to obtain these materials is supported by past precedent. Specifically, in both the *Hastings* and *Nixon* Impeachment trials, defense counsel requested the assistance of the Senate in acquiring discovery from third-party sources. The Senate developed a procedure to permit such discovery, whereby the Chairman of the Senate Impeachment Trial Committee submitted a letter requesting that the third-party produce the requested discovery. See Letter from Senator Wyche Fowler, Jr., dated July 18, 1989, attached as Exhibit 5. Senate personnel then reviewed the materials and designated for production to defense counsel those materials that were deemed relevant to any article of impeachment or asserted defense.

12. Because new counsel has only recently been added to this case and because the evidentiary hearing in this matter is fast approaching, Judge Porteous seeks the immediate assistance of the Senate in procuring the materials delineated above from the ABA. Having attempted to obtain these materials voluntarily, and having been rebuffed, such immediate assistance is necessary in order to help avoid any undue delay in these proceedings.

13. Alternatively, Judge Porteous suggests the following two additional options. First, if the ABA has already provided all requested material to the Senate Judiciary Committee (in connection with its consideration of Judge Porteous's 1994 nomination and confirmation), then the Senate may wish to provide that material to Judge Porteous directly. Second, should the Senate decline to provide the materials itself, Judge Porteous proposes that, due to the truncated timeframe, all of the requested material be produced by the ABA directly to Judge Porteous and that he enter into an appropriate

protective order regarding the material, pursuant to which he would agree not to discuss or disclose such material absent use at the evidentiary hearing itself. Such a process would allow for an expedited review and avoid any delay of the trial.

WHEREFORE, Judge Porteous respectfully requests that the Senate implement a procedure to ensure that all relevant materials from the American Bar Association are made available to Judge Porteous.

Respectfully submitted,

/s/ Jonathan Turley  
Jonathan Turley  
2000 H Street, N.W.  
Washington, D.C. 20052  
(202) 994-7001

/s/ Daniel C. Schwartz  
Daniel C. Schwartz  
P.J. Meitl  
Daniel T. O'Connor  
BRYAN CAVE LLP  
1155 F Street, N.W., Suite 700  
Washington, D.C. 20004  
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.  
United States District Court Judge for the  
Eastern District of Louisiana

Dated: June 30, 2010



**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – [abaron@seyfarth.com](mailto:abaron@seyfarth.com)

Mark Dubester – [mark.dubester@mail.house.gov](mailto:mark.dubester@mail.house.gov)

Harold Damelin – [Harold.damelin@mail.house.gov](mailto:Harold.damelin@mail.house.gov)

Kirsten Konar – [kkonar@seyfarth.com](mailto:kkonar@seyfarth.com)

Jessica Klein – [jessica.klein@mail.house.gov](mailto:jessica.klein@mail.house.gov)

/s/ Daniel T. O'Connor

## Exhibit 1



U. S. Department of Justice  
Office of Policy Development

---

Washington, D.C. 20530

June 28, 1994

Robert P. Watkins, Esq.  
Williams & Connolly  
725 12th Street, N.W.  
Washington, D.C. 20005

Dear Mr. Watkins:

We would appreciate having the formal report of the ABA Standing Committee on Federal Judiciary on G. Thomas Porteous, Jr., who is under consideration for appointment as United States District Judge for the Eastern District of Louisiana.

To facilitate the Committee's evaluation, we have asked Judge Porteous to forward his response to the Personal Data Questionnaire to you and to the Circuit representative of the Committee.

Sincerely yours,

A handwritten signature in dark ink, reading "Eleanor D. Acheson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eleanor D. Acheson  
Assistant Attorney General

cc: Sylvia H. Walbolt, Esq.

PORT000000066

## Exhibit 2



Office of the Attorney General  
Washington, D. C. 20530

August 24, 1994

Dear Mr. President:

I have the honor to enclose the nomination of G. Thomas Porteous, Jr., of Louisiana, to be United States District Judge for the Eastern District of Louisiana vice Robert F. Collins, resigned.

Judge Porteous was born December 15, 1946 in New Orleans, Louisiana. He received a B.A. degree in 1968 from Louisiana State University and a J.D. degree in 1971 from Louisiana State University Law School. He was admitted to the Louisiana State Bar in 1971.

Since 1984, Judge Porteous has served as a District Judge for the 24th Judicial District Court of Louisiana. Prior to his appointment to the court, he was City Attorney for the City of Harahan, 1982-1984; a partner in the law firm of Porteous & Mustakas, 1980-1984; a partner in the law firm of Porteous, Lee & Mustakas, 1976-1980; a partner in the law firm of Edwards, Porteous & Lee, 1974-1976; Chief of the Felony Complaint Division of the District Attorney's Office for the Parish of Jefferson, 1973-1975; a partner in the law firm of Edwards, Porteous & Amato, 1973-1974; and Special Counsel for the Louisiana Attorney General's Office, 1971-1973.

The appropriate Circuit Representative of the Standing Committee on Federal Judiciary of the American Bar Association has preliminarily found Judge Porteous qualified for appointment to this position, and that finding is before this Committee for a final vote. We have no reason to believe that the Committee's vote and a formal report will differ from the preliminary rating. He bears an excellent reputation as to character and integrity, has judicial temperament and is, I believe, worthy of appointment as a United States District Judge.

I recommend the nomination.

Respectfully,

*Janet Reno*  
Janet Reno

The President  
The White House

*Copy to  
V. Radd 8/25*

*ET*

## Exhibit 3



AMERICAN BAR ASSOCIATION Standing Committee on  
Federal Judiciary

1800 M Street, NW  
Washington, DC 20036  
(202) 331-2210

CHAIR  
William E. Willis  
135 Broad Street  
28th Floor  
New York, NY 10004-2498

FIRST CIRCUIT  
Michael S. Greco  
19th Floor  
One International Place  
100 Oliver Street  
Boston, MA 02110

SECOND CIRCUIT  
Arnold I. Burns  
23rd Floor  
1585 Broadway  
New York, NY 10036

THIRD CIRCUIT  
Victor F. Battaglia, Jr.  
1600 Mellon Bank Center  
Tenth and Market Streets  
Wilmington, DE 19801

FOURTH CIRCUIT  
J. Hardin Marion  
26th Floor  
300 East Pratt Street  
Baltimore, MD 21202

FIFTH CIRCUIT  
Pike Powers, Jr.  
2400 One American Center  
600 Congress Avenue  
Austin, TX 78701

SIXTH CIRCUIT  
Charles E. English  
1101 College Street  
Bowling Green, KY 42103-0770

SEVENTH CIRCUIT  
Thomas Z. Hayward, Jr.  
Suite 2020  
70 West Madison Street  
Chicago, IL 60602-4207

EIGHTH CIRCUIT  
James E. McDaniel  
714 Locust Street  
St. Louis, MO 63101

NINTH CIRCUIT  
Lambard C. Howell  
Arctic Building Penthouse  
700 Third Avenue  
Seattle, WA 98104

TENTH CIRCUIT  
Richard M. Macias  
624 South Grand Avenue  
Los Angeles, CA 90017

OKLAHOMA CITY, OK 73102-2275  
Eleventh Circuit  
Mona S. Landrind  
500 West Main

Eleventh Circuit  
Sylvia H. Walcott  
Barnett Towers, Suite 2300  
One Progress Plaza  
St. Petersburg, FL 33701

DISTRICT OF COLUMBIA  
CIRCUIT  
Carolyn B. Lamm  
Suite 300  
1707 Pennsylvania Avenue, N.W.

Washington, DC 20006-4604

FEDERAL CIRCUIT  
Mortimer M. Caplin  
Suite 1100  
One Thomas Circle, N.W.

Washington, DC 20005  
BOARD OF GOVERNORS  
LIAISON

R. William Ida III  
One Peachtree Center  
303 Peachtree Street  
Atlanta, GA 30308

STAFF LIAISON  
Irene E. Emmellen  
American Bar Association  
1800 M Street, NW  
Washington, DC 20036  
(202) 331-2210

CONFIDENTIAL

August 30, 1994

Hon. Eleanor Dean Acheson  
Assistant Attorney General  
United States Department of Justice  
Office of the Attorney General  
Room 5131  
Washington, D.C. 20530

RE: HONORABLE G. THOMAS PORTEOUS, JR.  
United States District Court  
Eastern District of Louisiana

Dear Eldie:

As a result of our investigation our Committee is  
unanimously of the opinion that Honorable G. Thomas  
Porteous, Jr. is Qualified for appointment as Judge of  
the United States District Court, Eastern District of  
Louisiana.

Sincerely,

*Bill*

William E. Willis  
Chair

cc: All Committee Members

PORT000000062



AMERICAN BAR ASSOCIATION

Standing Committee on  
Federal Judiciary  
1800 M Street, NW  
Washington, DC 20036  
(202) 331-2210

CHAIR  
William E. Willis  
125 Broad Street  
28th Floor  
New York, NY 10004-1498

FIRST CIRCUIT  
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9th Floor  
One International Place  
100 Oliver Street  
Boston, MA 02110

SECOND CIRCUIT  
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1565 Broadway  
New York, NY 10036

THIRD CIRCUIT  
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FOURTH CIRCUIT  
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FIFTH CIRCUIT  
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SEVENTH CIRCUIT  
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Suite 2200  
70 West Madison Street  
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EIGHTH CIRCUIT  
James E. McDaniel  
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St. Louis, MO 63101

NINTH CIRCUIT  
Lemhard G. Howell  
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Seattle, WA 98104

Richard M. Macias  
624 South Grand Avenue  
Los Angeles, CA 90017

TENTH CIRCUIT  
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Norma City, OK 73102-2225

ELEVENTH CIRCUIT  
Sylvia H. Walbolt  
Barnett Tower, Suite 2201  
One Progress Plaza  
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DISTRICT OF COLUMBIA  
CIRCUIT  
Carolyn B. Lamm  
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FEDERAL CIRCUIT  
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STAFF LIAISON  
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American Bar Association  
1800 M Street, NW  
Washington, DC 20036  
(202) 331-2210

CONFIDENTIAL

August 30, 1994

Committee on the Judiciary  
ATT: Hon. Joseph R. Biden, Jr., Chairman  
224 Dirksen Senate Office Bldg.  
Washington, D.C. 20510-6275

RE: HONORABLE G. THOMAS PORTEOUS, JR.  
United States District Court  
Eastern District of Louisiana

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Honorable G. Thomas Porteous, Jr. for appointment as Judge of the United States District Court, Eastern District of Louisiana.

Our Committee is unanimously of the opinion that Judge Porteous is Qualified for this appointment.

A copy of this letter has been sent to Judge Porteous for his information.

Sincerely,

William E. Willis  
Chair

CC: Honorable G. Thomas Porteous, Jr.  
All ABA Judiciary Committee Members  
Hon. Eleanor Dean Acheson

PORT000000063





AMERICAN BAR ASSOCIATION

Standing Committee on  
Federal Judiciary  
1800 M Street, NW  
Washington, DC 20036  
(202) 331-2270

CHAIR  
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125 Broad Street  
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FIRST CIRCUIT  
Michael S. Greco  
10th floor

One International Place  
700 Oliver Street  
Boston, MA 02170

SECOND CIRCUIT  
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New York, NY 10036

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Baltimore, MD 21202

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600 Congress Avenue  
Austin, TX 78701

SIXTH CIRCUIT  
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NINTH CIRCUIT  
Lemhard G. Howell  
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624 South Grand Avenue  
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ELEVENTH CIRCUIT  
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FEDERAL CIRCUIT  
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STAFF LIAISON  
Irene R. Emsellem  
American Bar Association  
1800 M Street, N.W.  
Washington, DC 20036  
(202) 331-2270

CONFIDENTIAL

August 30, 1994

Honorable G. Thomas Porteous, Jr.  
24th Judicial District Court  
Division "A"  
Gretna Courthouse Annex Bldg.  
Second Floor, Room 200  
Gretna, LA 70053

Dear Judge Porteous:

Congratulations on your nomination for appointment  
as Judge of the United States District Court, Eastern  
District of Louisiana.

At the invitation of the United States Senate  
Committee on the Judiciary, we have today sent a letter  
to them reporting on our evaluation of your  
qualifications. A copy of this letter is enclosed for  
your information.

Sincerely,

*Bill Willis*  
William E. Willis  
Chair

(Enclosure)

cc: All ABA Judiciary Committee Members  
Hon. Eleanor Dean Acheson

PORT000000064

## Exhibit 4



Daniel C. Schwartz  
Direct: 202-508-6025  
dschwartz@bryancave.com

June 30, 2010

**VIA EMAIL AND FIRST-CLASS MAIL**

Kim J. Askew  
Chair and Member-At-Large  
American Bar Association,  
Standing Committee on the Federal Judiciary  
1717 Main Street, Suite 2800  
Dallas, TX, 75201  
Email: kim.askew@klgates.com

Denise A. Cardman  
American Bar Association, Staff Liaison  
740 15th Street, N.W.  
Washington, DC 20005-1019  
Email: cardmand@staff.abanet.org

Dear Ms. Askew and Ms. Cardman:

I write as counsel to Judge G. Thomas Porteous, Jr., of the United States District Court for the Eastern District of Louisiana, who is the subject of an impeachment issued by the House of Representatives and now before the United States Senate. The purpose of this letter is to request the opportunity to review and make copies of certain materials in the possession of the American Bar Association, Standing Committee on the Federal Judiciary in order to prepare for the Senate trial.

The Senate Impeachment Counsel have asked the defense to formally request this material before seeking the intervention of the Senate to guarantee this discovery. The information that we are seeking is highly material to the Articles of the Impeachment.

The materials that we request include the following:

- a. All materials in the possession of the American Bar Association, including the American Bar Association's Standing Committee on the Federal Judiciary, that refer or relate to Judge G. Thomas Porteous, Jr., including without limitation any information or evidence gathered, reports prepared (in either draft or final form), or opinions rendered concerning Judge Porteous's fitness to serve on the federal bench.

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St. Louis

June 30, 2010

Page 2

Bryan Cave LLP

The evidentiary hearings in the Senate are scheduled to begin in mid-September 2010 and all motions must be filed by July 21, 2010. As such, we would appreciate your prompt response to this request, whether through by mail, fax, or email.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Daniel C. Schwartz", with a stylized flourish at the end.

Daniel C. Schwartz

cc: Alan I. Baron, Esq., House Impeachment Counsel  
Morgan Frankel, Esq., Senate Legal Counsel  
Derron Parks, Esq., Senate Impeachment Trial Committee

## Exhibit 5

**United States Senate**

WASHINGTON, DC 20510

July 18, 1989

John C. Keeney, Esq.  
Deputy Assistant Attorney General  
Criminal Division  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Keeney:

As Chairman of the Senate Impeachment Trial Committee on the Articles of Impeachment against Judge Nixon, I write to request the Department's assistance in the Committee's efforts to assure that Judge Nixon receives a fair trial in the Senate. The Committee has determined that it would make a useful contribution to the trial process if the Department were willing to permit the Committee, through its staff, to review the documents (excluding grand jury materials governed by Rule 6(e)) in the possession of the Department, including those possessed by the Federal Bureau of Investigation, that were requested by Judge Nixon in his June 1, 1989 letter to the Attorney General, which was the subject of your response on June 21, 1989.

The review would be consistent with that conducted in the case of the Hastings impeachment matter. That is, the focus of the review would be to determine if there is evidence that the investigations were conducted in a manner intended to mislead a court or trier of fact as to Judge Nixon's guilt or innocence. In the event that it is determined that particular documents should properly be made part of the pending impeachment proceedings, and accordingly made available to the parties for use at trial, the committee would hear from the Department prior to disclosing any documents that you believe contain particularly sensitive matters, so that we may address any continuing concerns that you have. No documents or portions of documents would be made available to the parties without the consent of the Department.

Your expeditious response to this request would be most helpful to the committee in attempting to complete discovery by July 31st.

Sincerely,

  
Wyche Fowler, Jr.

**In The Senate of The United States  
Sitting as a Court of Impeachment**

---

**In re:**

**Impeachment of G. Thomas Porteous, Jr.,  
United States District Judge for the  
Eastern District of Louisiana**

---

**JUDGE G. THOMAS PORTEOUS, JR.'S NOTICE OF  
THE REFUSAL OF THE AMERICAN BAR ASSOCIATION  
TO PROVIDE DOCUMENTS VOLUNTARILY**

**NOW BEFORE THE SENATE**, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and notifies the Senate that the American Bar Association (“ABA”) has refused to voluntarily provide Judge Porteous with certain requested discovery materials. In support, Judge Porteous states as follows:

1. On June 30, 2010, Judge Porteous, through counsel, sent a letter (the “Letter Request”) to the ABA requesting the production of certain materials relating to Judge Porteous that are in the possession of the ABA’s Standing Committee on the Federal Judiciary (the “ABA Standing Committee”).<sup>1</sup> A copy of the Letter Request is attached as Exhibit 1.

2. As detailed in the Letter Request, Judge Porteous sought production of:

---

<sup>1</sup> Between June and August of 1994, the ABA Standing Committee, at the request of the U.S. Department of Justice, investigated Judge Porteous and prepared a formal report concerning his fitness for appointment to the federal bench.



All materials in the possession of the American Bar Association, including the American Bar Association's Standing Committee on the Federal Judiciary, that refer or relate to Judge G. Thomas Porteous, Jr., including without limitation any information or evidence gathered, reports prepared (in either draft or final form), or opinions rendered concerning Judge Porteous's fitness to serve on the federal bench.

(Ex. 1.)

3. Also on June 30, 2010, anticipating that the ABA would refuse this request and seeking to move expeditiously so as to avoid any undue delay in these proceedings, Judge Porteous filed a Motion For Assistance Securing Discovery From the American Bar Association (the "Motion"). In his Motion, Judge Porteous sought the assistance of the Senate in obtaining the requested information from the ABA.

4. On July 7, 2010, the Senate Impeachment Trial Committee (the "Committee") Staff held a Status Conference with counsel for all parties. At that Status Conference, Committee Staff advised that the Senate would act on Judge Porteous's Motion after the ABA responded to the Letter Request.

5. On July 13, 2010, counsel for Judge Porteous received the ABA's response to the Letter Request, a copy of which is attached as Exhibit 2. In its response, the ABA refused to voluntarily produce to Judge Porteous those documents sought in his Letter Request, with one, small exception.<sup>2</sup> While noting its history of maintaining material gathered in connection with judicial nominees in confidence, the ABA did not, however, state that it would refuse to provide such material if requested by the Senate.

---

<sup>2</sup> The ABA did provide, as an attachment to its response, a one-page letter dated August 30, 1994, from the ABA Standing Committee to the then-Chair of the Senate Judiciary Committee, Senator Joseph Biden, disclosing its finding that Judge Porteous was qualified for appointment to the federal bench. This single page letter had previously been provided to Judge Porteous, and was attached to the Motion as exhibit 3.



6. Given the ABA's clear statement that it will not provide Judge Porteous with the material that he has requested voluntarily, the Senate's assistance is required.<sup>3</sup>

7. The Senate should provide such assistance because, as explained in the Motion (*see* ¶¶ 6, 11), it is necessary in order to obtain highly relevant and material information, and is supported by past precedent.

WHEREFORE, Judge Porteous respectfully requests that the Senate grant his Motion and implement one of the following three procedures to ensure that all relevant material in the possession of the ABA is immediately made available to Judge Porteous:

1) Instruct the ABA to produce the materials sought by Judge Porteous to the Senate, have Committee Staff review such materials, and then produce to Judge Porteous any material that the Senate deems relevant to any article of impeachment or asserted defense;

2) Determine if the ABA previously provided all materials sought by Judge Porteous to the Senate Judiciary Committee (in connection with its consideration of Judge Porteous's 1994 nomination and confirmation) and, if so, produce that material to Judge Porteous directly; or

3) Instruct the ABA to produce all materials sought by Judge Porteous directly to Judge Porteous.<sup>4</sup>

---

<sup>3</sup> Such assistance is further required since, based on conversations that Judge Porteous's counsel had with two former Chairs of the ABA Standing Committee (who served from 1993 to 1995), it is our understanding that whatever records exist concerning the ABA's 1994 investigation into Judge Porteous, those materials are in the exclusive possession of the current Chair of the ABA Standing Committee.

<sup>4</sup> If necessary, Judge Porteous is willing to enter into an appropriate protective order regarding such produced material, pursuant to which he would agree not to discuss or disclose the material absent use at the evidentiary hearing itself.

Respectfully submitted,

/s/ Jonathan Turley

Jonathan Turley  
2000 H Street, N.W.  
Washington, D.C. 20052  
(202) 994-7001

/s/ Daniel C. Schwartz

Daniel C. Schwartz  
P.J. Meitl  
Daniel T. O'Connor  
BRYAN CAVE LLP  
1155 F Street, N.W., Suite 700  
Washington, D.C. 20004  
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.  
United States District Court Judge for the  
Eastern District of Louisiana

Dated: July 13, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – [abaron@seyfarth.com](mailto:abaron@seyfarth.com)

Mark Dubester – [mark.dubester@mail.house.gov](mailto:mark.dubester@mail.house.gov)

Harold Damelin – [harold.damelin@mail.house.gov](mailto:harold.damelin@mail.house.gov)

Kirsten Konar – [kkonar@seyfarth.com](mailto:kkonar@seyfarth.com)

Jessica Klein – [jessica.klein@mail.house.gov](mailto:jessica.klein@mail.house.gov)

/s/ Daniel T. O'Connor

## Exhibit 1



Daniel C. Schwartz  
 Direct: 202-508-6025  
 dschwartz@bryancave.com

June 30, 2010

**VIA EMAIL AND FIRST-CLASS MAIL**

Kim J. Askew  
 Chair and Member-At-Large  
 American Bar Association,  
 Standing Committee on the Federal Judiciary  
 1717 Main Street, Suite 2800  
 Dallas, TX, 75201  
 Email: kim.askew@klgates.com

Denise A. Cardman  
 American Bar Association, Staff Liaison  
 740 15th Street, N.W.  
 Washington, DC 20005-1019  
 Email: cardmand@staff.abanet.org

Dear Ms. Askew and Ms. Cardman:

I write as counsel to Judge G. Thomas Porteous, Jr., of the United States District Court for the Eastern District of Louisiana, who is the subject of an impeachment issued by the House of Representatives and now before the United States Senate. The purpose of this letter is to request the opportunity to review and make copies of certain materials in the possession of the American Bar Association, Standing Committee on the Federal Judiciary in order to prepare for the Senate trial.

The Senate Impeachment Counsel have asked the defense to formally request this material before seeking the intervention of the Senate to guarantee this discovery. The information that we are seeking is highly material to the Articles of the Impeachment.

The materials that we request include the following:

- a. All materials in the possession of the American Bar Association, including the American Bar Association's Standing Committee on the Federal Judiciary, that refer or relate to Judge G. Thomas Porteous, Jr., including without limitation any information or evidence gathered, reports prepared (in either draft or final form), or opinions rendered concerning Judge Porteous's fitness to serve on the federal bench.

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June 30, 2010

Page 2

Bryan Cave LLP

The evidentiary hearings in the Senate are scheduled to begin in mid-September 2010 and all motions must be filed by July 21, 2010. As such, we would appreciate your prompt response to this request, whether through by mail, fax, or email.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Daniel C. Schwartz", with a stylized flourish at the end.

Daniel C. Schwartz

cc: Alan I. Baron, Esq., House Impeachment Counsel  
Morgan Frankel, Esq., Senate Legal Counsel  
Derron Parks, Esq., Senate Impeachment Trial Committee

## Exhibit 2



R. Thomas Howell, Jr.  
General Counsel

AMERICAN BAR ASSOCIATION

Office of the General Counsel  
321 North Clark Street, 21<sup>st</sup> Floor  
Chicago, Illinois 60610  
(312) 988-5215  
(312) 988-5217 - Fax  
e-mail: howell@staff.abanet.org

July 12, 2010

VIA UNITED POSTAL SERVICE AND E-MAIL TO [dschwartz@bryancave.com](mailto:dschwartz@bryancave.com)

Daniel C. Schwartz  
Bryan Cave LLP  
1155 F. Street N.W.  
Washington, D.C. 20004

Re: Judge G. Thomas Porteous, Jr.

Dear Mr. Schwartz:

Please consider this letter as the response of the American Bar Association to your letter dated June 30, 2010 to Kim J. Askew and Denise A. Cardman, requesting certain materials concerning your client, Judge G. Thomas Porteous, Jr., that are in the possession of the American Bar Association, Standing Committee on the Federal Judiciary (the "Standing Committee").

The only document that the Standing Committee can provide is the letter dated August 30, 1994, which was prepared by then-Chair, William E. Willis. This letter, a copy of which is attached, contained the Standing Committee's rating of "Qualified" and was transmitted to the White House, the Department of Justice, each member of the Senate Judiciary Committee, and the nominee. No other written materials were publicly released. Further, as the Senate Judiciary Committee did not request that the Standing Committee testify with respect to this nomination, no written testimony was provided or oral statements given on behalf of the Standing Committee.

Throughout its existence, the Standing Committee has steadfastly maintained the strict confidentiality of all information collected and materials prepared in connection with its review of a nominee's professional qualifications for service on the federal bench. The assurance of confidentiality, which is given to each judge, lawyer and other individual who participates in this peer-review process, is essential to the Standing Committee's ability to obtain candid assessments and is the foundation for the impartiality and integrity of the rating that results.

Yours truly,

R. Thomas Howell, Jr.

Attachment

cc: Alan I. Baron, Esquire, House Impeachment Counsel (via hand delivery)  
Morgan Frankel, Esquire, Senate Legal Counsel (via hand delivery)  
Derron Parks, Esquire, Senate Impeachment Trial Committee (via hand delivery)





AMERICAN BAR ASSOCIATION

Standing Committee on

Federal Judiciary

1800 M Street, NW

Washington, DC 20036

(202) 337-3210

1344B  
William F. Smith  
125 Broad Street  
28th Floor  
New York, NY 10004-2498

FIRST CIRCUIT  
Nicholas S. Gryn  
30th Floor  
One International Place  
800 Oliver Street  
Boston, MA 02109

SECOND CIRCUIT  
Arnold L. Barm  
23rd Floor  
198 Broadway  
New York, NY 10006

THIRD CIRCUIT  
Victor E. Battaglia, Sr.  
800 Marion Park Center  
Smith and Market Streets  
Wilmington, DE 19801

FOURTH CIRCUIT  
J. Gordon Blanton  
26th Floor  
100 Lee Park Street  
Baltimore, MD 21201

FIFTH CIRCUIT  
Rita Powers, Jr.  
2406 One American Center  
600 Congress Avenue  
Austin, TX 78701

SIXTH CIRCUIT  
Charles L. English  
101 College Plaza  
Bowling Green, KY 42302-0718

SEVENTH CIRCUIT  
Thomas E. Hayward, Jr.  
Suite 200  
70 West Madison Street  
Chicago, IL 60602-4207

EIGHTH CIRCUIT  
James L. McDermott  
714 Locust Street  
St. Louis, MO 63101

NINTH CIRCUIT  
Frederick C. Penick  
Arctic Building Penthouse  
700 Third Avenue  
Seattle, WA 98101

TENTH CIRCUIT  
Alana S. Lambard  
100 West Main  
Oklahoma City, OK 73102-3275

ELEVENTH CIRCUIT  
John H. Volzke  
Barnett Tower, Suite 2200  
One Pegasus Plaza  
St. Petersburg, FL 33701

DISTRICT OF COLUMBIA  
CIRCUIT  
Carolyn S. Leman  
Suite 500  
110 Pennsylvania Avenue, NW  
Washington, DC 20004-4044

FEDERAL CIRCUIT  
Mortimer M. Caplan  
Suite 1200  
One Thomas Circle, NW  
Washington, DC 20005

BOARDS OF GOVERNORS  
LIAISON  
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One Peachtree Center  
303 Peachtree Street  
Atlanta, GA 30308

STAFF LIAISON  
Irene S. Engelstein  
American Bar Association  
1800 M Street, NW  
Washington, DC 20036  
(202) 337-3210

**CONFIDENTIAL**

August 30, 1994

Committee on the Judiciary  
ATTN: Hon. Joseph R. Biden, Jr., Chairman  
224 Dirksen Senate Office Bldg.  
Washington, D.C. 20510-6275

RE: HONORABLE G. THOMAS PORTEOUS, JR.  
United States District Court  
Eastern District of Louisiana

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Honorable G. Thomas Porteous, Jr. for appointment as Judge of the United States District Court, Eastern District of Louisiana.

Our Committee is unanimously of the opinion that Judge Porteous is Qualified for this appointment.

A copy of this letter has been sent to Judge Porteous for his information.

Sincerely,

*Bill Willis*  
William E. Willis  
Chair

cc: Honorable G. Thomas Porteous, Jr.  
All ABA Judiciary Committee Members  
Hon. Eleanor Dean Acheson

CLAIRE McCASKILL, MISSOURI, CHAIRMAN  
 ORRIN G. HATCH, UTAH, VICE CHAIRMAN  
 AMY KLOBUCHAR, MINNESOTA  
 SHELDON WHITEHOUSE, RHODE ISLAND  
 TOM UDALL, NEW MEXICO  
 JEANNE SHAMLEN, NEW HAMPSHIRE  
 EDWARD E. KAUFMAN, DELAWARE  
 JIM DEMME, SOUTH CAROLINA  
 JOHN BARRASSO, WYOMING  
 ROBERT F. WICKER, MISSISSIPPI  
 MIKE JOHNSON, NEBRASKA  
 JAMES E. RISK, IDAHO

## United States Senate

SENATE IMPEACHMENT  
 TRIAL COMMITTEE

WASHINGTON, DC 20510-6326

July 9, 2010

The Honorable Patrick J. Leahy, Chairman  
 The Honorable Jeff Sessions, Ranking Member  
 U.S. Senate Committee on the Judiciary  
 United States Senate  
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

As you know, the Senate is in the process of fulfilling our role under the Constitution to conduct a trial on the articles of impeachment against Judge G. Thomas Porteous, Jr. of the Eastern District of Louisiana. We, as the Chairman and Vice Chairman of the Senate Impeachment Trial Committee, request your assistance in obtaining files from the National Archives related to the nomination and confirmation of Judge Porteous. Specifically, the Committee is seeking any and all information or files that the Judiciary Committee may have received or compiled during the confirmation process for Judge Porteous in 1994.

It is alleged that Judge Porteous made false statements in connection with his nomination and confirmation to the Federal bench. Judge Porteous believes that what was known to the Senate Judiciary Committee prior to his confirmation is material to his defense. As such, Judge Porteous has requested this Committee's assistance in obtaining documents related to the FBI background investigation, the judicial rating process of the American Bar Association's Standing Committee on the Federal Judiciary, questionnaires, transcripts of confidential interviews and any other relevant material. We believe that some of this information may be contained in the archived files of the Senate Judiciary Committee.

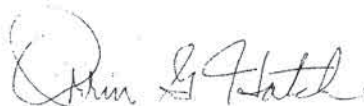
The Senate Impeachment Trial Committee will provide whatever information it is provided to counsel for Judge Porteous. We ask that the Senate Judiciary Committee authorize Susan Smelcer of the Congressional Research Service, acting on behalf of this Committee, to obtain all Senate Judiciary Committee archived material related to the nomination and confirmation of Judge Porteous.

Thank you for your attention to this request.

Sincerely,



Claire McCaskill  
 Chairman



Orrin G. Hatch  
 Vice Chairman

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN  
 DIANNE FEINSTEIN, CALIFORNIA  
 RUSSELL D. FEINGOLD, WISCONSIN  
 CHARLES E. SCHUMER, NEW YORK  
 RICHARD J. DURBIN, ILLINOIS  
 BENJAMIN L. CARDIN, MARYLAND  
 SHELDON WHITEHOUSE, RHODE ISLAND  
 AMY KLOBUCHAR, MINNESOTA  
 EDWARD E. KAUFMAN, DELAWARE  
 ARLEN SPECTER, PENNSYLVANIA  
 AL FRANKEN, MINNESOTA

JEFF SESSIONS, ALABAMA  
 ORRIN G. HATCH, UTAH  
 CHARLES E. GRASSLEY, IOWA  
 JON KYL, ARIZONA  
 LINDSEY O. GRAHAM, SOUTH CAROLINA  
 JOHN CORNYN, TEXAS  
 TOM COBURN, OKLAHOMA

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRIAN A. COHEN, *Chief Counsel and Staff Director*  
 BRIAN A. BENZKOWSKI, *Republican Staff Director*

July 27, 2010

The Honorable Claire McCaskill, Chairman  
 The Honorable Orrin G. Hatch, Vice Chairman  
 Senate Impeachment Trial Committee  
 United States Senate  
 Washington, D.C. 20510

Dear Chairman McCaskill and Vice Chairman Hatch:

We write in response to your July 9 letter requesting documents from the Senate Judiciary Committee's archived files on the 1994 nomination of Judge G. Thomas Porteous to the U.S. District Court for the Eastern District of Louisiana. Your letter explains that the request is made based on Judge Porteous' belief that the Committee has documents "material to his defense."

When the House Impeachment Task Force requested our files on the same matter, we provided them with the following items, which are also attached here on a DVD: a chart with dates of materials received on the nomination; the nomination; blue slips; the ABA rating letter; resume; Senate Questionnaire (public and Committee confidential section) including the financial disclosure and signed affidavit; opinions; news articles; and the Senate hearing transcript.

Your letter references "the FBI background information, the judicial rating process of the American Bar Association's Standing Committee on the Federal Judiciary, questionnaires, transcripts of confidential interviews and other relevant material." As a matter of practice, the Committee does not retain the FBI background information. Instead, the FBI background information compiled and provided to the Committee by the U.S. Department of Justice at the time of the nomination was returned to the Executive branch. We have provided the ABA rating letter. The Committee does not have materials on "the judicial rating process" of the ABA Standing Committee. We have provided the Senate Questionnaire, including the Committee confidential section. The Committee does not possess "any transcripts of confidential interviews."

Although not requested by your letter, we also note the following additional documents:

(1) a staff memorandum summarizing Judge Porteous' responses on his Senate public questionnaire, which also includes a summary of the endorsements of Judge Porteous collected during staff due diligence calls; (2) handwritten staff notes from phone calls to 6 of 10 individuals listed by Judge Porteous on pages 22-23 of his Senate public questionnaire as individuals who "recently dealt with [him] on legal matters within the last five years;" and (3) three pages of typed staff notes summarizing the FBI background information.

The Honorable Claire McCaskill, Chairman  
 The Honorable Orrin G. Hatch, Vice Chairman  
 July 27, 2010  
 Page 2 of 2

First, the staff memorandum would ordinarily be considered "Committee Confidential" and it has that label at the top of the document. It does not indicate the name of the staffer who drafted it. It does not indicate whether the memo was circulated to any Committee staffers or Senators. It appears to summarize information derived from that provided by the then-nominee in his questionnaire and staff due diligence calls. It also contains a summary of articles reviewed as the result of a Lexis-Nexis search, many of which have been provided. We are enclosing a copy of this memorandum.

Second, the handwritten staff notes from phone calls do not reveal the name of the staffer who made the calls. Whoever it was, that person is no longer an employee of the Committee and his or her identity is not readily apparent given the changeover among Committee staff during the last 16 years. These pages do not contain anything negative about the then-nominee from the references he provided. As you will see, the notes do not reflect any comments about out-of-court behavior. Given their lack of relevance to your proceedings and the fact that we do not know whether the Committee promised confidentiality when making these calls, we are reluctant to release these notes. If you would like to review them for relevance, please let us know and we will arrange that.

Finally, the staff notes summarizing the FBI background information are governed by a Memorandum of Understanding between the Committee and the Executive branch, which requires that "[n]otes and memoranda derived from the contents of the FBI background investigation reports ... shall, in whatever form ... be ... secured in the same manner as FBI background investigation reports." The author of the notes is not indicated and they contain no analysis. There is no indication that these notes were shared with Senators, which would have been highly unlikely. We understand that the House Impeachment Task Force obtained the FBI background information and have made them available to you. These staff notes appear to derive from someone's review of the FBI background information and are entirely derivative of what was in that material. We have been in contact with the Executive branch and have been advised that there is no objection to our disclosing these notes to your committee. We are enclosing a copy of the notes.

In the process of reviewing our archives at your request, we also discovered two letters from Judge Porteous to then-Chairman Biden supplementing his Senate questionnaire. Copies of these letters and their attachments are also enclosed.

Sincerely,

  
 PATRICK LEAHY  
 Chairman

  
 JEFF SESSIONS  
 Ranking Member



CLARE MCCASKILL, MISSOURI, CHAIRMAN  
 ORRIN G. HATCH, UTAH, VICE CHAIRMAN  
 AMY KLOBUCHAR, MINNESOTA  
 SHELDON WHITEHOUSE, RHODE ISLAND  
 TOM UDALL, NEW MEXICO  
 JEANNE SHAHEEN, NEW HAMPSHIRE  
 EDWARD E. KAUFMAN, DELAWARE  
 JIM DEMINT, SOUTH CAROLINA  
 JOHN BARRASSO, WYOMING  
 ROGER F. WACKER, MISSISSIPPI  
 MIKE JOHANNES, NEBRASKA  
 JAMES F. RESCH, IDAHO

## United States Senate

SENATE IMPEACHMENT  
 TRIAL COMMITTEE

WASHINGTON, DC 20510-6326

July 30, 2010

### VIA E-MAIL AND HAND DELIVERY

Jonathan Turley, Esq.  
 George Washington University Law School  
 2000 H Street, N.W.  
 Washington, D.C. 20052

Alan I. Baron, Esq.  
 Chief Special Impeachment Counsel  
 U.S. House of Representatives  
 Washington D.C. 20515


Dear Counsel:

I am writing to provide you with the entire Senate Judiciary Committee file with the exceptions noted in the July 27, 2010 letter from Chairman Patrick Leahy and Ranking Member Jeff Sessions. The production includes all of the materials provided by the Senate Judiciary Committee to the House Impeachment Task Force. In addition, the Senate Judiciary Committee provided the following additional documents to the Senate Impeachment Trial Committee:

1. Judge Porteous letter supplementing his questionnaire dated 9-15-94, including attachments;
2. Judge Porteous letter supplementing his questionnaire dated 9-29-94, including attachments;
3. Judiciary Committee staff confidential memorandum; and
4. Judiciary Committee staff confidential notes on the FBI background investigation file.

Due to the size of the files, I am only attaching, via electronic mail, the four documents which were not previously produced to the House. A full electronic copy of all of the documents will be hand-delivered on Monday. If you have any questions, please feel free to contact me.

Sincerely,

  
 Derron R. Parks  
 Staff Director  
 Senate Impeachment Trial Committee

Enclosures as stated

SENATE IMPLACEMENT  
TRIAL COMMITTEE

WASHINGTON, DC 20510-6326

Judge G. Thomas Porteous, Jr. filed motions seeking the Committee's assistance in securing discovery from the American Bar Association ("ABA") and the Metropolitan Crime Commission ("MCC"). The Committee understands from Judge Porteous's counsel that the MCC has cooperated with Judge Porteous in resolving the document requests; therefore, that motion is denied as moot. Judge Porteous continues to request the Committee's assistance in securing discovery from the ABA, which the Committee denies.

Judge Porteous submitted a request to the ABA on June 30, 2010, seeking all materials in its possession “that refer or relate to Judge G. Thomas Porteous, Jr., including without limitation any information or evidence gathered, reports prepared (in either draft or final form), or opinions rendered concerning Judge Porteous’s fitness to serve on the federal bench.” On the same day, Judge Porteous moved for the Committee’s assistance in securing discovery of these materials from the ABA. On July 12, 2010, the ABA, through its counsel, responded to Judge Porteous’s request, disclosing one letter dated August 30, 1994, from the ABA Standing Committee on the Federal Judiciary to the Senate Committee on the Judiciary, rating Judge Porteous as Qualified for appointment to the federal bench. This letter was the only document publicly released by the ABA in connection with Judge Porteous’s nomination. In declining to provide other responsive documents from its files, the ABA response explained its policy of “strict confidentiality of all information collected and materials prepared in connection with its review of a nominee’s professional qualifications for service on the federal bench.”

The Committee finds that the ABA's background investigation file is not relevant to, or likely to lead to new evidence on, the Articles of Impeachment. First, Article IV alleges that

Judge Porteous "knowingly made false statements about his past to both the United States Senate and to the Federal Bureau of Investigation." The ABA's file on Judge Porteous is not relevant to whether he knowingly made false statements during his nomination and confirmation process during his FBI background check and on his Senate Judiciary Committee's Questionnaire for Judicial Nominees." Second, the ABA response indicates that written materials regarding Judge Porteous's nomination and confirmation were neither publicly released nor provided to the Senate Judiciary Committee, except for the August 30 letter. Further, "no written testimony was provided or oral statements given on behalf of the [ABA] Standing Committee."

In the alternative, Judge Porteous seeks ABA material related to his nomination and confirmation from the Senate Judiciary Committee's files. While not required, and on its own initiative, this Committee obtained the full Senate Judiciary Committee file on the nomination and confirmation of Judge Porteous and provided that material to both parties on July 30, 2010.

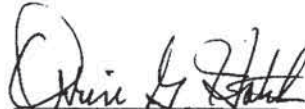
### CONCLUSION

For these foregoing reasons, the Motion for Assistance in Securing Discovery from the MCC is denied as moot. The Motion for Assistance in Securing Discovery from the ABA is denied.

Dated: August 4, 2010



CLAIRE McCASKILL  
Chairman



ORRIN G. HATCH  
Vice Chairman

**In The Senate of the United States**  
**Sitting as a Court of Impeachment**

<b>In re:</b>	)
<b>Impeachment of G. Thomas Porteous, Jr.,</b>	)
<b>United States District Judge for the</b>	)
<b>Eastern District of Louisiana</b>	)
	)

**JUDGE G. THOMAS PORTEOUS, JR.'S MOTION FOR ASSISTANCE IN  
SECURING DISCOVERY FROM THE DEPARTMENT OF JUSTICE**

**NOW BEFORE THE SENATE**, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and respectfully requests the assistance of the Senate in securing discovery materials from the United States Department of Justice. In support, Judge Porteous states the following:

1. The Federal Bureau of Investigation ("FBI"), under the supervision of the Department of Justice, was responsible for investigating Judge Porteous after President Clinton nominated him to the federal bench in 1994.

2. The FBI also investigated possible corruption at the Jefferson Parish Courthouse in Gretna, Louisiana through Operation Wrinkled Robe between approximately 1999 and 2002. As part of this investigation, the FBI investigated former state court judges, including Judge Porteous.

3. In investigating whether impeachment of Judge Porteous was appropriate, the House of Representatives (the "House") acquired certain files from the Department of Justice relating to both the investigation concerning Judge Porteous's nomination and the Wrinkled Robe investigation.



4. The articles of impeachment against Judge Porteous allege a concealment of conflicts of interest in connection with his prior service as a state judge in Louisiana. Moreover, the witnesses called by the House during its impeachment proceedings specifically raised the distinction between issues known before the confirmation and issues concealed from the Senate and its investigators. Thus, the question of what was known before Judge Porteous's confirmation is highly material to any defense at his Senate impeachment trial.

5. Many of the allegations raised in the articles of impeachment involve practices of judges in the Jefferson Parish Courthouse in the 1980s and early 1990s. As such, the practices of judges other than Judge Porteous are relevant to possible defenses, including but not limited to the view of what constituted *de minimis* gifts or services for judges.

6. The House has apparently refused to produce to Judge Porteous all documents made available to it from all sources, including the Department of Justice. The House's Special Impeachment Counsel have also refused to produce a simple listing of withheld files – as they did previously in the Hastings impeachment. This is the subject of a separate motion, which is being filed concurrently with this motion.

7. In the Hastings and Nixon impeachment trials, defense counsel for the accused requested the assistance of the United States Senate in acquiring discovery from third-party sources, such as the Department of Justice. A procedure was developed to permit discovery of Justice Department materials. In those cases, the Chairman of the Senate Impeachment Trial Committee submitted a letter to the Department of Justice requesting that it produce the requested discovery. (See Letter from Senator Wyche

Fowler, dated July 18, 1989, attached as Exhibit 1.) The Justice Department complied with these requests and produced the documentation directly to the Senate. (See Letters from James Cole, dated August 1, 1989 and August 11, 1989, attached as Exhibit 2.) Senate personnel then reviewed the materials and designated for production to counsel for the accused those materials that were deemed relevant to any article of impeachment or asserted defense.

8. Judge Porteous seeks the production of the following materials:

- a. All FBI 302 forms – both draft and completed versions – relating to the FBI's investigation of Judge Porteous in connection with his nomination and confirmation to the federal bench in 1994.
- b. All material collected by the FBI and/or the Department of Justice during its investigation of Judge Porteous in connection to his nomination and confirmation to the federal bench in 1994.
- c. All material from the Wrinkled Robe investigation that references or relates to Judge Porteous.
- d. All material from the Wrinkled Robe investigation that references or relates to the setting, modifying, and/or splitting of bail bonds.
- e. All material from the Wrinkled Robe investigation that references or relates to Jacob Amato, Robert Creely, Louis Marcotte, and Lois Marcotte
- f. All material from the Wrinkled Robe investigation that references or relates to gifts, money, or other items of value received by judges, magistrates, or other judicial officers in the Jefferson Parish Courthouse.
- g. All Department of Justice "Prosecution Memorandums" that reference or relate to Judge Porteous.
- h. All Department of Justice "Requests for Authorizations to Indict" individuals in connection to the Wrinkled Robe investigation.

9. Because new counsel has only recently been added to this case and because the evidentiary hearing in this matter is fast approaching, Judge Porteous seeks

the immediate assistance of the Senate in procuring these materials. In prior cases, defense counsel initially corresponded with the Justice Department, received correspondence in return rebuffing their requests for materials, filed motions with the Senate for assistance, and then waited for the Justice Department to comply. For example, in the case of Judge Nixon, this process took over two months – an amount of time that current defense counsel simply do not have given the impending trial schedule in this matter. Thus, in an effort to avoid unnecessary delay, Judge Porteous seeks the immediate assistance of the Senate in resolving this issue.

Alternatively, Judge Porteous suggests that, due to the truncated timeframe, that all of the requested material be produced directly to Judge Porteous and that Judge Porteous enter into an appropriate protective order regarding that material. The relevance of these categories of discovery is obvious. Judge Porteous will agree not to discuss or disclose such material absent use at the evidentiary hearing itself. Such a process would allow for an expedited review and avoid any delay of the trial.

WHEREFORE, Judge Porteous respectfully requests that the Senate implement a procedure to ensure that relevant materials from the Justice Department be made available to Judge Porteous.

Respectfully submitted,

/s/ Jonathan Turley  
Jonathan Turley  
2000 H Street, N.W.  
Washington, D.C. 20052  
(202) 994-7001

/s/ Daniel C. Schwartz  
Daniel C. Schwartz  
P.J. Meitl  
Daniel T. O'Connor  
BRYAN CAVE LLP  
1155 F Street, N.W., Suite 700  
Washington, D.C. 20004  
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.  
United States District Court Judge for the  
Eastern District of Louisiana

Dated: June 27, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – [abaron@sevfarth.com](mailto:abaron@sevfarth.com)

Mark Dubester – [mark.dubester@mail.house.gov](mailto:mark.dubester@mail.house.gov)

Harold Damelin – [Harold.damelin@mail.house.gov](mailto:Harold.damelin@mail.house.gov)

Kirsten Konar – [kkonar@sevfarth.com](mailto:kkonar@sevfarth.com)

Jessica Klein – [jessica.klein@mail.house.gov](mailto:jessica.klein@mail.house.gov)

/s/ P.J. Meitl

# Exhibit 1

**United States Senate**

WASHINGTON, DC 20510

July 18, 1989

John C. Keeney, Esq.  
Deputy Assistant Attorney General  
Criminal Division  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Keeney:

As Chairman of the Senate Impeachment Trial Committee on the Articles of Impeachment against Judge Nixon, I write to request the Department's assistance in the Committee's efforts to assure that Judge Nixon receives a fair trial in the Senate. The Committee has determined that it would make a useful contribution to the trial process if the Department were willing to permit the Committee, through its staff, to review the documents (excluding grand jury materials governed by Rule 6(e)) in the possession of the Department, including those possessed by the Federal Bureau of Investigation, that were requested by Judge Nixon in his June 1, 1989 letter to the Attorney General, which was the subject of your response on June 21, 1989.

The review would be consistent with that conducted in the case of the Hastings impeachment matter. That is, the focus of the review would be to determine if there is evidence that the investigations were conducted in a manner intended to mislead a court or trier of fact as to Judge Nixon's guilt or innocence. In the event that it is determined that particular documents should properly be made part of the pending impeachment proceedings, and accordingly made available to the parties for use at trial, the committee would hear from the Department prior to disclosing any documents that you believe contain particularly sensitive matters, so that we may address any continuing concerns that you have. No documents or portions of documents would be made available to the parties without the consent of the Department.

Your expeditious response to this request would be most helpful to the committee in attempting to complete discovery by July 31st.

Sincerely,

  
Nyche Fowler, Jr.

## Exhibit 2





## U.S. Department of Justice

Washington, D.C. 20530

AUG 1 1989

Donald A. Purdy, Jr., Esq.  
 Counsel to the Committee  
 United States Senate Impeachment  
 Trial Committee  
 Room Sh-902D  
 Hart Senate Office Building.  
 Washington, D.C. 20510

Dear Mr. Purdy:

Re: United States District Judge Walter L. Nixon, Jr.

Pursuant to the request of Senator Wyche Fowler, Jr., Chairman of the Senate Impeachment Trial Committee, the Department of Justice is providing the documents the Committee has requested concerning the investigation and prosecution of United States District Court Judge Walter L. Nixon, Jr. In some cases, where noted, redactions have been made to the documents to delete attorney work product. The documents provided are as follows:

1. Draft FBI Form, 302 Report of Interview of Stewart Sargent (4 pages).
2. Transcript of proffer of Wylie Fairchild on November 1, 1984 (9 pages).
3. Handwritten chronology (4 pages).
4. Memo, "Prosecution Memorandum of Carroll Ingram," dated December 7, 1984 (2 pages after redaction).
5. Memo, "Recommendation to Prosecute Paul H. 'Bud' Holmes," dated March 22, 1985 (9 pages after redaction).
6. Polygraph Report on Paul Hardin Holmes, dated July 12, 1985 (4 pages).
7. Handwritten notes (5 pages).
8. Handwritten "Drew Chronology" (9 pages).
9. Memo, "Request for Authorization to Indict Reditt 'Drew' Fairchild," dated March 18, 1985 (2 pages).

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- 2 -

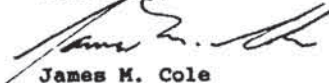
10. Memo, "Recommendation to Prosecute Drew Fairchild," dated March 22, 1985 (3 pages).
11. "Chart" (2 pages).
12. FBI Memo From SA Jerry Ripley to SAC Jackson, dated July 6, 1981 (2 pages).
13. Memo, "Recommendation to Prosecute United States District Judge Walter L. Nixon," dated July 9, 1985 (9 pages after redaction).
14. Memo, "Recommendation to Prosecute United States District Judge Walter L. Nixon," dated July 22, 1985 (9 pages after redaction).
15. Memo, "Request for Authorization to Apply for Disclosure of Tax Returns -- Walter L. Nixon," dated July 9, 1985 (2 pages).
16. Memo, "United States v. Paul H. 'Bud' Holmes: Marshals Service Staffing," dated June 6, 1985 (4 pages).
17. Handwritten notes, "Wallace Gunn TC 10/2/85" (1 page).
18. Memo, "Mississippi Investigation," dated April 30, 1984 (3 pages after redaction).
19. FBI Form 302, Report of Interview of Elma Manasco, dated November 6, 1984 (1 page).
20. Handwritten notes, first page headed "Weldon Kennedy," dated March 5, 1984 (13 pages).
21. FBI Form 302, Report of Interview of Thomas L. Dial, dated August 28, 1984 (2 pages).
22. FBI Form 302, Report of Interview of Captain James R. Kelly, dated January 24-25-26, 1984 (3 pages).
23. FBI Form 302, Report of Interview of Tom Dial, dated November 15, 1983 (2 pages).
24. FBI Form 302, Report of Interview of Robert Royals, dated January 9, 1986 (2 pages).
25. Handwritten note, headed "Ingram" (3 pages).
26. FBI Form 302, Report of Interview of Billy Riley, dated November 28, 1984 (2 pages).

- 3 -

27. Handwritten note, headed "Bud and Fanning . . ."  
(1 page).
28. Letter from Jack Morton, Deputy Regional Counsel, IRS,  
to Honorable Glenn L. Archer, Jr., Assistant Attorney  
General, Tax Division, dated December 16, 1985 (5 pages).
29. Memo, "Status Report re: The Petit Bois Bribe  
Investigation," dated November 19, 1985 (20 pages after  
redaction).
30. Handwritten notes, headed "McMullan Proffer" (10 pages).
31. "Daily Report" for May 7, 1985 (2 pages).
32. "Walter Louis Nixon, Jr., ET AL, Narcotics Case -  
Background" (18 pages).

Should the Committee have any further questions concerning  
this matter, please feel free to contact me at 786-5059.

Sincerely,



James M. Cole  
Deputy Chief  
Public Integrity Section  
Criminal Division

Enclosures



## U.S. Department of Justice

Washington, D.C. 20530

AUG 11 1989

Mr. Donald A. Purdy, Jr.  
Counsel  
Senate Impeachment Trial Committee  
902 Hart Senate Office Building  
Washington, D.C. 20510

Dear Mr. Purdy:

Re: United States District Judge Walter L. Nixon, Jr.

Pursuant to the supplemental request of the Senate Impeachment Trial Committee, the Department of Justice is providing the additional documents concerning the investigation and prosecution of Judge Walter L. Nixon, Jr. Those documents are as follows:

1. Transcript of Grand Jury testimony of Carroll Ingram on February . , 1985 (47 pages).
2. Handwritten notes headed "Baltar File" (1 page).
3. Handwritten notes headed "Ingram Proffer Joel Blast Office 1/16/85" (4 pages).
4. Handwritten notes headed "Ingram File Proffer in D.C. 1/29/85" (15 pages).
5. Handwritten notes headed "Ingram Feb 12, 1985 Baton Rouge" (6 pages).
6. Handwritten notes headed "Ingram" (8 pages).
7. Handwritten notes headed "Ingram" (1 page).
8. Handwritten notes headed "Ingram Misc" (9 pages).
9. Handwritten notes headed "Ingram" (1 page).
10. Handwritten notes headed "Ingram" (1 page).

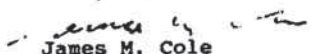
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- 2 -

11. Handwritten notes headed "Bud Holmes File" (5 pages).
12. Handwritten notes headed "Bud - Drews case" (1 page).
13. Handwritten notes headed "Holmes --> Baltar" (1 page).
14. Handwritten notes (1 page).
15. Handwritten notes headed "Facts of Drews case" (1 page).
16. Handwritten notes headed "Katie" (1 page).
17. Handwritten notes headed "Katie" (1 page).
18. Handwritten notes headed "Drew State Pros File" (15 pages).
19. Letter from R.A. Fairchild, To Whom It May Concern, dated June 20, 1983 (1 page).
20. Handwritten notes headed "Leave grantee blank" (1 page).
21. Letter from Dantin & Dantin to Frank D. Montague, Jr., dated June 5, 1985 (2 pages).
22. Typed and handwritten notes (2 pages).
23. Handwritten notes headed "Matison" (1 page).
24. Typed and handwritten notes headed "Bud Holmes re: Bob Stockett" (1 page).
25. FBI teletype from Jackson to Director, FBI, dated July 1985 (7 pages).

Of the documents listed above, the only one which has not been delivered to you is the FBI teletype, described in item 25 above. I am enclosing three copies of that document with this letter. Should the Committee have any questions concerning this matter, please feel free to contact me at my office.

Sincerely,

  
James M. Cole  
Deputy Chief  
Public Integrity Section  
Criminal Division

Enclosures





Daniel C. Schwartz  
Direct: 202-508-6025  
dschwartz@bryancave.com

June 30, 2010

**VIA EMAIL, FACSIMILE, AND FIRST-CLASS MAIL**

Ms. M. Faith Burton  
Congressional Liaison Officer  
U.S. Department of Justice,  
Office of Legislative Affairs  
Main Justice Building, Room 1145  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Facsimile: 202-305-2643  
Email: faith.burton@usdoj.gov

Dear Ms. Burton:

I write as counsel to Judge G. Thomas Porteous, Jr., of the United States District Court for the Eastern District of Louisiana, who is the subject of an impeachment issued by the House of Representatives and now before the United States Senate. The purpose of this letter is to request the opportunity to review and make copies of certain materials in the Department of Justice's possession in order to prepare for the Senate trial.

The Senate Impeachment Counsel have asked the defense to formally request this material before seeking the intervention of the Senate to guarantee this discovery. The information that we are seeking is highly material to the Articles of the Impeachment.

The materials we request include the following:

- a. All FBI 302 forms – both draft and completed versions – relating to the FBI's investigation of Judge Porteous in connection with his nomination and confirmation to the federal bench in 1994.
- b. All material collected by the FBI and/or the Department of Justice during its investigation of Judge Porteous in connection to his nomination and confirmation to the federal bench in 1994.
- c. All material from the Wrinkled Robe investigation that references or relates to Judge Porteous.
- d. All material from the Wrinkled Robe investigation that references or relates to the setting, modifying, and/or splitting of bail bonds.

**Bryan Cave LLP**  
1155 F Street N.W.  
Washington, D.C. 20004  
Tel (202) 508-6000  
Fax (202) 508-6200  
www.bryancave.com

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St. Louis

June 30, 2010

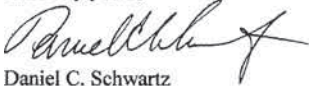
Page 2

Bryan Cave LLP

- e. All material from the Wrinkled Robe investigation that references or relates to Jacob Amato, Robert Creely, Louis Marcotte, and Lois Marcotte
- f. All material from the Wrinkled Robe investigation that references or relates to gifts, money, or other items of value received by judges, magistrates, or other judicial officers in the Jefferson Parish Courthouse.
- g. All Department of Justice "Prosecution Memorandums" that reference or relate to Judge Porteous.
- h. All Department of Justice "Requests for Authorizations to Indict" individuals in connection to the Wrinkled Robe investigation.

The evidentiary hearings in the Senate are schedule to begin in mid-September 2010 and all motions must be filed by July 21, 2010. As such, we would appreciate your prompt response to this request, whether through by mail, fax, or email.

Sincerely yours,



Daniel C. Schwartz

cc: Alan I. Baron, Esq., House Impeachment Counsel  
Morgan Frankel, Esq., Senate Counsel  
Derron Parks, Esq., Senate Impeachment Trial Committee

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 19, 2010

Daniel C. Schwartz, Esquire  
Bryan Cave LLP  
1155 F Street, NW  
Washington, DC 20004

Dear Mr. Schwartz:

This responds to your letter, dated June 30, 2010, which requested materials from the Department of Justice in connection with your representation of Judge G. Thomas Porteous, Jr. in the impeachment proceedings pending in the United States Senate.

Historically, the Department has not provided materials to officials facing impeachment, since the Department is not a party to those congressional proceedings. It is the responsibility of the Congress to provide any relevant materials to such officials. As a courtesy, we are responding to your requests by describing the extensive production that the Department has previously made to the Committee on the Judiciary in the U.S. House of Representatives (House Committee), either directly or through our document production to the U.S. Court of Appeals for the Fifth Circuit in connection with our referral of a judicial misconduct complaint concerning Judge Porteous, which the Fifth Circuit provided to the House Committee. To the best of our knowledge, the House Committee has received all documents in our possession that are relevant to the articles of impeachment, and we understand that the Committee has made those documents available to counsel for Judge Porteous.

As we have advised your colleague, we provided records regarding Judge Porteous, totaling 804 pages, to the House Committee in 2009 in connection with the impeachment proceedings in that body. Enclosed are copies of our correspondence regarding these disclosures. Also enclosed is the referral letter we sent to the Fifth Circuit on May 18, 2007. The letter sets forth the Department's reasons for not seeking criminal charges against Judge Porteous and contains an extensive discussion of the evidence the Department gathered concerning Judge Porteous's misconduct. The Department also provided approximately 12,378 pages of documents relating to its referral to the Fifth Circuit, which we understand were subsequently made available to counsel for Judge Porteous. Additionally, we understand that the House Committee has made available copies of all the documents obtained by staff as a result of meetings with Federal Bureau of Investigation representatives in New Orleans in October and November of 2009, and January of 2010. We believe that the FBI provided all of the documents that the House Committee requested as relevant to Judge Porteous.



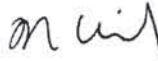
As stated above, we believe that all of the relevant factual information relating to Judge Porteous has already been made available to his attorneys by the House Committee. Taken as a whole, these materials include FBI 302s and other material collected by the FBI in connection with the investigation of Judge Porteous prior to his 1994 confirmation to the federal bench and materials about Judge Porteous from the Wrinkled Robe investigation. Some of the Wrinkled Robe records pertain to his conduct relating to bail bonds, other judicial officers, and other individuals named in your letter.

The Department's production to the Fifth Circuit and the House Committee did not include our internal memoranda relating to the prosecution decisions concerning Judge Porteous and the Wrinkled Robe investigation. Based on the Department's longstanding policy of protecting the confidentiality and independence of prosecutorial deliberations, we are not prepared to make those deliberative materials available for the impeachment proceeding. We also note that our obligations under the Privacy Act, 5 U.S.C. § 552a, would complicate any effort by the Department to disclose to you records relating to third parties, although it appears that you have already received them from the House Committee, which is not covered by that Act.

We appreciate the importance of fairness in Judge Porteous's impeachment proceedings and want to assure you that we are unaware of any information in our records about Judge Porteous that is relevant or material to the articles of impeachment that is not contained in the records provided to the House Committee, and by the Committee to counsel for Judge Porteous. Under these circumstances, we are convinced that repeating our searches in response to your request would constitute only time-consuming efforts that would serve no useful purpose.

We hope that this information is helpful.

Sincerely,



Ronald Weich  
Assistant Attorney General

Enclosures

cc: Alan I. Baron, Esq., House Impeachment Counsel  
Morgan Frankel, Esq., Senate Counsel  
Derron Parks, Esq., Senate Impeachment Trial Committee



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 18, 2009

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to the Committee's letter, dated March 31, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr.

Enclosed are 223 pages of records pertaining to the Senate confirmation of Judge Porteous, including his questionnaires and other material he supplied to the FBI. Social Security numbers have been redacted from these documents in order to protect individual privacy interests. Nonetheless, these records implicate substantial individual privacy interests and, accordingly, we request that you consult with the Department prior to disclosing their contents outside of the Committee.

The FBI is working to process additional documents responsive to your request and we will supplement this response as soon as they become available. Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronald Weich", is positioned above the typed name.

Ronald Weich  
Assistant Attorney General

Enclosures

cc: The Honorable Lamar S. Smith  
Ranking Minority Member



## U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 25, 2009

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This supplements our prior response to the Committee's letter, dated March 31, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr.

Enclosed are 309 pages of records pertaining to the Senate confirmation of Judge Porteous, including his background questionnaire (SF 86), FBI 302 reports of interviews in connection with the background investigation, and other related documents. These records along with the documents we produced to the Committee on June 18, 2009, complete our response to your March 31, 2009, request for documents relating to the background investigation of Judge Porteous.

The enclosed documents bear limited redactions of personal information, such as social security numbers, date of births, cell phone numbers, non-public numbers, and other limited information implicating individual privacy interests. We also have redacted the names and personal information related to law enforcement personnel, and text that would identify sources who requested confidentiality during the course of the background investigation. Nonetheless, these records implicate substantial individual privacy interests and, accordingly, we request that you consult with the Department prior to disclosing their contents outside of the Committee.

We hope that this information is helpful. Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich", is written over a horizontal line.

Ronald Weich  
Assistant Attorney General

Enclosures

cc: The Honorable Lamar S. Smith



## U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 9, 2009

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This supplements our prior response to the Committee's letter, dated March 31, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr.

Enclosed are 52 pages of documents from the Metropolitan Crime Commission of New Orleans (MCC) investigation file of Judge Porteous that were in the possession of the Department of Justice. We have consulted with the MCC on the release of the enclosed documents, and been advised that the MCC does not object to our provision of these documents to the Committee for its impeachment investigation of Judge Porteous.

We hope that this information is helpful. Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ron Weich".

Ronald Weich  
Assistant Attorney General

Enclosures

cc: The Honorable Lamar S. Smith  
Ranking Minority Member



## U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

July 20, 2009

The Honorable Adam B. Schiff  
Chairman  
The Honorable Bob Goodlatte  
Ranking Minority Member  
Impeachment Task Force  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman and Congressman Goodlatte:

This responds to your letter, dated June 12, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr. This also supplements our prior responses of June 18 and 25, 2009, and July 9, 2009, to the Committee on this matter.

Enclosed are 163 pages of documents responsive to Items 1 and 10 of your letter. The enclosed documents bear limited redactions of personal information, such as social security numbers, date of births, cell phone numbers, non-public numbers, and other limited information implicating individual privacy interests. Similarly, we have also redacted the names and personal information related to law enforcement personnel, and the names of sources who requested during the course of the investigation of Judge Porteous that their identities not be revealed. Nonetheless, these records implicate substantial individual privacy interests and, accordingly, we request that you consult with the Department prior to disclosing their contents outside of the Committee.

In addition, below are our responses to the Committee's twelve requests for documents and information set forth in your letter:

1. Enclosed are the FBI 302s for Jeff Duhon, and Aubrey Wallace from the Department's investigation of Judge Porteous. Judge George Giacobbe was not interviewed during the investigation of Judge Porteous. Also enclosed are additional FBI 302s which Committee staff requested on July 13, 2009. However, as explained to Committee staff on July 17, 2009, we are unable to identify the interviewees of these particular FBI 302s because they have requested that their identities not be revealed.



The Honorable Adam B. Schiff  
 The Honorable Bob Goodlatte  
 Page Two

2. On July 9, 2009, we provided the Committee with a copy of the Metropolitan Crime Commission (MCC) investigative file of Judge Porteous.

3. The Department has no such records concerning or verification of instances where Judge Porteous set bonds for Louis Marcotte while he was a federal judge.

4. Any responsive records in the Department's possession regarding this particular request are covered by Federal Rule of Criminal Procedure 6(e) and, therefore, cannot be released without a court order authorizing their disclosure. As you know, on July 8, 2009, the General Counsel for the U.S. House of Representatives filed a motion, pursuant to Rule 6(e), with the United State District Court for the Eastern District of Louisiana, seeking disclosure of grand jury materials in the Porteous investigation. The district court's ruling on the Committee's motion will determine which, if any, of the specific documents made in this request can be disclosed by the Department. We note that both Jacob Amato, Jr. and Robert Creely are represented by Ralph Capitelli, Esq., an attorney in New Orleans, Louisiana. Mr. Capitelli may be in a position to assist the Committee in its effort to obtain the requested information. Mr. Capitelli may be reached at (504) 582-2425.

5. Jan Rotolo was the bookkeeper for the law firm of Creely & Amato. Ms. Rotolo was not interviewed by the FBI in relation to the Department's investigation of Judge Porteous. Other relevant administrative personnel for the law firm of Creely & Amato are Diane Lamule, Robert Creely's secretary, who was interviewed twice by the FBI during its investigation of Judge Porteous, and Deborah Mull, Jacob Amato's secretary, who was not interviewed by the FBI.

6. For the identical reasons set forth in our reply to Item 4, any responsive records in the Department's possession regarding this specific request are covered by Federal Rule of Criminal Procedure 6(e) and, therefore, cannot be release by the Department without a court order authorizing their disclosure. Again, we invite the Committee to contact Mr. Capitelli, who may be able to assist the Committee in its effort to obtain the requested information.

7. The status of the source or sources to which the Complaint of Judicial Misconduct refers remains confidential. However, we can confirm no such source has any personal knowledge concerning the allegations about Judge Porteous's receipt of payments from attorneys.

8. The Department has no such records relating to an "externship" for Judge Porteous's son.

9. Special Agent Dave Williams of the Office of Inspector General for the Department of the Interior (OIG DI) conducted the investigation into the hunting trips sponsored by Rowan Drilling Company and Diamond Offshore. He may be reached at (505) 828-3500.

The Honorable Adam B. Schiff  
The Honorable Bob Goodlatte  
Page Three

10. We are providing the FBI investigative file relating to the expungement allegations of Aubrey Wallace's and Jeffrey Duhon's state criminal convictions by Judge Porteous. Other than attorney work product, these documents are the only records of the Department of Justice responsive to your request.

11. On June 23, 2009, Assistant United States Attorney Brian, during a conference call informed Committee staff that any such records are in the possession of the OIG DI, and that the Committee should contact Special Agent Dave Williams of the OIG DI to obtain a copy of the requested documents;

12. The Department has been informed that then-Judge, now Chief Judge Richard T. Haik of the Western District of Louisiana, also went on one of the sponsored hunting trips. The Department is unaware of the identity of the Rowan Drilling litigation counsel who went on any such trip.

We hope that this information is helpful. Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ronald Weich', is positioned above the printed name.

Ronald Weich  
Assistant Attorney General

Enclosures



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 23, 2009

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This supplements our prior responses to the Committee's letter, dated March 31, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr.

Enclosed are 22 pages of records pertaining to an investigation of Judge Porteous' compliance with a bankruptcy order, including FBI 302 reports of individuals interviewed in connection with that investigation. These documents bear limited redactions of personal information, such as social security numbers, date of births, cell phone numbers, non-public numbers, and other limited information implicating individual privacy interests. Similarly, we have also redacted the names and personal information related to law enforcement personnel, and the names of sources who requested that their identities not be revealed. Nonetheless, these records implicate substantial individual privacy interests and, accordingly, we request that you consult with the Department prior to disclosing their contents outside of the Committee.

Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

Ronald Weich  
Assistant Attorney General

Enclosures

cc: The Honorable Lamar S. Smith  
Ranking Minority Member





U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 13, 2009

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This supplements our prior responses to the Committee's letter, dated March 31, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr.

Enclosed are 32 pages of records from the "Wrinkled Robe" investigation conducted by the FBI and the United States Attorney's Office for the Eastern District of Louisiana pertaining to Judge Porteous. The enclosed materials are from an affidavit executed on August 27, 2001, in the Wrinkled Robe investigation supporting an application for an order authorizing Title III electronic surveillance of various telephone lines. While these documents were under seal, the Court modified the sealing order to permit this disclosure to you and the Committee's further use of the records.

The affidavit has been redacted to delete material that is not pertinent to Judge Porteous, who is referred to as "Judge #2." In addition, we have also redacted from the affidavit the names and personal information related to law enforcement personnel, and the names of sources who requested that their identities not be revealed. Nonetheless, these records implicate substantial individual privacy interests and, accordingly, we request that you treat them with appropriate sensitivity.

Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

Ronald Weich  
Assistant Attorney General

Enclosures

cc: The Honorable Lamar S. Smith  
Ranking Minority Member



## U.S. Department of Justice

## Criminal Division

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Washington, D. C. 20536

May 18, 2007

The Honorable Edith H. Jones  
Chief Judge  
United States Court of Appeals for the Fifth Circuit  
515 Rusk Avenue, Room 12505  
Houston, Texas 77002-2655

Re: Complaint of Judicial Misconduct Concerning the Honorable  
G. Thomas Porteous, Jr.

Your Honor:

The United States Department of Justice respectfully submits this complaint referring allegations of judicial misconduct concerning the Honorable G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana, pursuant to 28 U.S.C. §§ 351-64 and the Rules Governing Complaints of Judicial Misconduct or Disability (amended July 15, 2003).<sup>1</sup>

For the past several years, the Federal Bureau of Investigation ("FBI") and a grand jury empanelled in the Eastern District of Louisiana investigated whether Judge Porteous and other individuals bribed or conspired to bribe a public official in violation of 18 U.S.C. §§ 201 and 371, committed or conspired to commit honest services mail- or wire-fraud in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1346, submitted false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filed false declarations, concealed assets, and acted in criminal contempt of court during his personal bankruptcy action in violation of 18 U.S.C. §§ 152 and 401.

The Department has determined that it will not seek criminal charges against Judge Porteous. Although the investigation developed evidence that might warrant charging Judge Porteous with violations of criminal law relating to judicial corruption, many of those incidents took place in the 1990s and would be precluded by the relevant statutes of limitations. In reaching its decision not to bring other available charges that are not time barred, the Department weighed the government's heavy burden of proof in a criminal trial, and the obligation to carry that burden to a unanimous jury; concerns about the materiality of some of Judge Porteous's provably false statements; the special difficulties of proving mens rea and intent to deceive beyond a reasonable doubt in a case of this nature; and the need to provide consistency in charging decisions concerning bankruptcy and criminal contempt matters. The Department also

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<sup>1</sup> This complaint contains information obtained by the grand jury. The district court has authorized disclosure of matters occurring before the grand jury pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i) solely for use in this complaint and any resulting judicial proceedings.

gave careful consideration -- as it must -- to the availability of alternative remedies for Judge Porteous's history of misconduct while on the bench, including impeachment and judicial sanctions administered pursuant to 28 U.S.C. §§ 351-64.

Despite the Department's decision not to charge Judge Porteous with violations of federal criminal law, the investigation has uncovered evidence of pervasive misconduct committed by Judge Porteous. The Department also is aware that Judge Porteous and his medical examiners have concluded that he is mentally and psychologically unfit to serve as a federal judge, and that his incompetency is permanent. Collectively, the evidence indicates that Judge Porteous may have violated federal and state criminal laws, controlling canons of judicial conduct, rules of professional responsibility, and conducted himself in a manner antithetical to the constitutional standard of good behavior required of all federal judges. Further, it has come to the Department's attention that Judge Porteous is scheduled to return to the federal bench in June 2007, at which time he may seek to preside over matters involving the Department. The Department accordingly refers this evidence to Your Honor for possible disciplinary proceedings and, if warranted, certification of the allegations to Congress for impeachment.

#### BACKGROUND

On October 11, 1994, G. Thomas Porteous, Jr., was confirmed by the United States Senate as a United States District Court Judge for the Eastern District of Louisiana. Before his elevation to the federal bench, he served as a judge on the 24th Judicial District Court of the State of Louisiana ("24th JDC") for ten years, from 1984 to 1994.

The New Orleans Division of the FBI conducted an investigation into allegations of judicial corruption in the 24th JDC. That investigation resulted in the convictions of fourteen defendants, including several 24th JDC judges, the owners of a bail bonding business, and other state court litigants and officials. During the investigation, the FBI was informed that Judge Porteous had in the past accepted, and as a federal judge continued to accept things of value, including payments and trips, from local attorneys, allegedly in exchange for favorable rulings. The FBI also was informed that Judge Porteous maintained an improper relationship with Louis and Lori Marcotte, the owners of a bail bonding business, who allegedly provided Judge Porteous as well as other state judges and employees various things of value in exchange for access and assistance on bond-related matters.

In March 2001, Judge Porteous and his wife, Carmella Porteous, filed for bankruptcy under Chapter 13. Gabriel and Carmella Porteous signed and filed a declaration that their bankruptcy schedules and statement of financial affairs were true to the best of their knowledge, information, and belief. Subsequently, the bankruptcy court confirmed a repayment plan based on the information the Porteouses submitted to the court. The bankruptcy judge issued an order providing for repayment to the creditors over a 36-month period and prohibiting the Porteouses from accruing further debt during the bankruptcy. The repayment plan was satisfied and the bankruptcy discharged in July 2004.



EVIDENCE OF MISCONDUCT

I. Evidence that Judge Porteous Violated the Order of the Bankruptcy Court

Judge Porteous and his wife Carmella Porteous filed for bankruptcy on March 28, 2001. The Porteouses' financial records show that they sought protection in bankruptcy in large part because of their substantial gambling activities. For example, between June 1995 and July 2000, while Judge Porteous served on the federal bench, over \$66,000 in gaming charges appear on Judge Porteous's credit card statements. Along with those credit card charges, between January 1996 and May 2000 Judge Porteous wrote checks or made cash withdrawals at casinos for an additional \$27,739.

Judge William Greendyke, sitting by designation on the Bankruptcy Court for the Eastern District of Louisiana, issued an Order confirming the bankruptcy repayment plan on June 28, 2001. Among other things, Judge Greendyke ordered that "[t]he debtor(s) shall not incur any additional debt during the term of this Plan except upon written approval of the Trustee." Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable."

Judge Porteous violated this order on multiple occasions. Among other debts, he obtained gambling markers and loans from casinos during the pendency of the bankruptcy proceeding.<sup>2</sup> Judge Porteous obtained the following short-term debts from casinos in the aggregate amount of \$31,900 in violation of the court's order:

- on August 20 and 21, 2001, Porteous borrowed \$8,000 from Treasure Chest Casino in Kenner, Louisiana;
- on September 28, 2001, Porteous borrowed \$2,000 from Harrah's Casino in New Orleans, Louisiana;
- on October 13, 2001, Porteous borrowed \$1,000 from Treasure Chest Casino in Kenner, Louisiana;
- on October 17 and 18, 2001, Porteous borrowed \$5,900 from Treasure Chest Casino in Kenner, Louisiana;
- on October 31, 2001, Porteous borrowed \$3,000 from Beau Rivage Casino in Biloxi, Mississippi;
- on November 27, 2001, Porteous borrowed \$2,000 from Treasure Chest Casino in Kenner, Louisiana;

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<sup>2</sup> A "marker" is a form of credit extended by a casino that enables a customer to borrow money while authorizing the casino to draw any unpaid balance after a fixed period of time from the customer's bank account. Typically, markers are deposited after a few days, but Judge Porteous obtained an agreement from at least one casino that he would be afforded thirty days to repay his markers before the casino would deposit them.

- on December 11, 2001, Porteous borrowed \$2,000 from Treasure Chest Casino in Kenner, Louisiana;
- on December 20, 2001, Porteous borrowed \$1,000 from Harrah's Casino in New Orleans, Louisiana;
- on February 12, 2002, Porteous borrowed \$1,000 from Grand Casino in Gulfport, Mississippi;
- on April 1, 2002, Porteous borrowed \$2,500 from Treasure Chest Casino in Kenner, Louisiana;
- on May 26, 2002, Porteous borrowed \$1,000 from Grand Casino, Gulfport, Mississippi; and
- on July 4 and 5, 2002, Porteous borrowed \$2,500 from Grand Casino, Gulfport, Mississippi.

In addition, the evidence shows that Judge Porteous violated the order prohibiting new debt on several other occasions. On July 4, 2002, Judge Porteous applied successfully to increase his credit limit at Grand Casino Gulfport from \$2,000 to \$2,500. Judge Porteous and his wife accrued new debt on a credit card in violation of the order, including \$734.31 in new charges between May 16 and June 18, 2001; \$277.74 in new charges between June 15 and July 18, 2001; and \$321.32 between July 16 and August 17, 2001.<sup>3</sup> Further, Judge Porteous and his wife obtained new, low-limited credit cards during the course of the bankruptcy without obtaining trustee approval, also in violation of the order. On several occasions, Judge Porteous signed the checks paying off the debts on credit cards that were obtained in his wife's name.

The evidence indicates that Judge Porteous intended to violate the order of the bankruptcy court. First, Judge Porteous is a federal judge who issues similar orders, and unquestionably expects that they will be obeyed. Claude C. Lightfoot, his bankruptcy attorney, testified that both he and the bankruptcy judge told Judge Porteous that he could not obtain new debt, that the requirement was well known to Judge Porteous, and that it was very clear to Judge Porteous that he would need approval to obtain new debt.<sup>4</sup> During a May 9, 2001 creditors meeting, Judge Porteous was further admonished by the trustee that he could not obtain new debt. The trustee also provided Judge Porteous with a written statement that reiterated the restriction on obtaining debt during bankruptcy, including credit card debt. Finally, Judge Porteous's actions in the bankruptcy show that he knew about the order's prohibition, and violated it willfully: not only

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<sup>3</sup> The Porteouses retained this credit card during the bankruptcy by failing to report on the bankruptcy application that they had paid off the debt on that card immediately before filing, as set forth below.

<sup>4</sup> The district court overseeing this grand jury investigation ruled that the attorney-client and work product privileges did not bar Lightfoot from testifying or producing records about his representation of Judge Porteous, both because the privilege did not apply to much of the requested information and also because the government satisfied its burden of showing that the crime-fraud exception defeated the claim of privilege.

did several of the violations occur soon after the confirmation order was issued, but he complied with the no-debt provision of the order in other instances that he knew were likely to come to the attention of the trustee. Specifically, the Porteouses requested permission from the bankruptcy trustee to refinance their home, which the trustee granted on December 20, 2002, and to obtain two new car leases, which the trustee granted on January 2, 2003. That Judge Porteous knew to request permission for other debts during the pendency of the bankruptcy makes clear that his failure to request permission for gambling and credit card debts was intentional and willful.

## II. Evidence that Judge Porteous Filed False Pleadings and Concealed Assets in Bankruptcy

Judge Porteous included numerous false statements in bankruptcy pleadings signed under penalty of perjury and submitted to the court -- statements that closed avenues of inquiry and undermined the administration of the bankruptcy by, among other things, concealing assets and income that potentially could have been made available to creditors, but were not.

### A. False Initial Petition

The evidence indicates that Judge Porteous intentionally filed his initial bankruptcy petition using a false name to protect himself from public embarrassment. The docket and various documents from the bankruptcy of Gabriel Thomas Porteous, Jr., and Carmella Porteous, case number 01-12363 in the Eastern District of Louisiana, indicate that a petition was filed on March 28, 2001, listing the debtors as "G.T. Ortous" and "C.A. Ortous" and their "street address" as "P.O. Box 1723, Harvey, LA 70059-1723." The social security numbers listed correspond to Gabriel Thomas Porteous, Jr., and Carmella Porteous. The petition was signed by Gabriel and Carmella Porteous in two places, once each directly over the printed name "Ortous." Those signatures were made under penalty of perjury.

Bankruptcy records also indicate that an amended petition was filed in the same case number on April 9, 2001, providing the debtors' names "Gabriel T. Porteous, Jr.," and "Carmella A. Porteous" and the street address "4801 Neyrey Dr., Metairie, LA 70002." United States Postal Service records include a PS Form 1093 Post Office Box assignment for P.O. Box 1723 in Harvey, Louisiana, which indicates that Gabriel T. Porteous, Jr., rented that box on March 20, 2001, just days before filing for bankruptcy.

The Porteouses' bankruptcy attorney testified that he and Judge Porteous specifically devised this scheme to sign under penalty of perjury an initial petition using a fabricated name and newly-acquired post office box address. The attorney testified that their purpose in falsifying the initial filing was to avoid publicity and humiliation by preventing Porteous's name from being listed in the local newspaper among other bankruptcies filed that week.

### B. Concealed Assets and Income

The investigation also obtained evidence that Judge Porteous concealed assets and income during his bankruptcy proceeding. The Chapter 13 Schedules and Plan were signed by Gabriel and Carmella Porteous and Claude Lightfoot and were filed on April 9, 2001. The Porteouses signed a declaration filed with the Schedules indicating that, under penalty of perjury,



the Schedules were true to the best of their knowledge, information, and belief. Judge Porteous also stated under oath in a hearing before the bankruptcy trustee on May 9, 2001, that the materials submitted were true to the best of his knowledge. However, the bankruptcy schedules and other Porteous financial records indicate that the Porteouses concealed from the bankruptcy court several assets and sources of income, including those described below.

1. Concealed Tax Refund – In response to question 17 of Schedule B, filed April 9, 2001, which asks for “other liquidated debts owing debtor including tax refunds,” Judge Porteous stated that there were “None.” For question 20 of Schedule B, which asks for “other contingent and unliquidated claims of every nature, including tax refunds,” Judge Porteous likewise responded, “None.” However, records provided by Bank One for accounts of Gabriel and Carmella Porteous indicated that a \$4,143.72 tax refund was deposited approximately one week later, on April 13, 2001. In an interview, the bankruptcy trustee indicated that the Porteouses did not notify him about their calendar year 2000 tax refund and did not turn the refund over to him even though they were required to do so. Their attorney, Claude Lightfoot, testified that the Porteouses never told him they were expecting a refund for calendar year 2000 when he went over each line of their schedules with them before signing and filing them.

2. Understated Bank Account Balance – In response to question 2 of Schedule B, which asks for “checking, savings, or other financial accounts, . . . or shares in banks, savings and loan, thrift, building and loan, and homestead associations,” the Porteouses listed “Bank One Checking Account No. 002379554” with a current value of \$100. However, the Porteouses’ Bank One statement for that account, covering the period March 23 to April 23, 2001, indicates that the balance in that account on March 28, 2001, the date the bankruptcy petition was filed, was more than \$1,800. The balance on April 9, 2001, the date the schedules were filed, was more than \$3,000. Another bank account, which had a balance of more than \$280 at the time, was not included in the bankruptcy filings at all. Judge Porteous’s bankruptcy attorney testified that the only account Judge Porteous told him about was the account listed in the schedules, and that the \$100 figure for that account came from Judge Porteous. By providing counsel with false and incomplete information, Porteous prevented his lawyer from rendering considered advice on what amounts to include, and by failing to disclose the full amount of assets in his bank account, Judge Porteous obstructed the trustee’s task of accurately providing a full accounting of the Porteouses’ financial condition to the bankruptcy court and interested creditors.

3. Carmella Porteous’s Employment – Schedule I requires debtors to list, among other items, current income, occupation, and name of employer for the individual debtors. On Schedule I, the Porteouses listed the employer and take-home pay for Judge Porteous, but provided no employer name or income for Carmella Porteous. However, the Porteouses’ bank records indicate that Carmella Porteous worked sporadically for several established employers both before and after the bankruptcy petition was filed. For instance, in the year 2000, she earned at least \$864 from Adecco Employment Services and \$327 from New Orleans Metropolitan Convention and Visitors, and in 2001, she earned \$3,109.50 from R&M Glynn, Inc., and \$915 from New Orleans Metropolitan Convention and Visitors. None of this income was indicated on the bankruptcy petition or schedules, nor was it subsequently brought to the attention of the trustee or the court.



### C. Concealed Preferred Creditors

The bankruptcy schedules and other Porteous financial records also indicate that the Porteouses apparently concealed from the bankruptcy trustee and creditors the existence of several additional creditors who were paid in full immediately before the bankruptcy was filed.

Gabriel and Carmella Porteous signed under penalty of perjury their Statement of Financial Affairs on April 9, 2001. Question 3 of the Statement stated, "List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within 90 days immediately preceding the commencement of this case." The Porteouses answered, "Normal installments." That statement was false, as they failed to list full repayments made to Fleet Credit Card Services and Grand Casino Gulfport shortly before they declared bankruptcy. These creditors therefore appear to be secretly preferred creditors, preferences that allowed the Porteouses to retain a credit card and protect their line of credit with a casino during the pendency of their bankruptcy repayment plan.

1. Fleet Credit Card – Credit card records of Carmella Porteous from Fleet Credit Card Services obtained pursuant to a grand jury subpoena indicate that Carmella Porteous held Fleet credit card account # 5447195123210658 prior to the filing of the Porteouses' bankruptcy on March 28, 2001. The records further indicate that the balance on that account, \$1,088.41, was paid in full with a March 23, 2001 check from Judge Porteous's secretary, Rhonda Danos. His secretary testified that she made that payment at Judge Porteous's direction. Accordingly, Fleet Credit Card Services was fully paid off, in contrast to the creditors included in the bankruptcy, and the Porteouses retained the Fleet credit card for their own use, all without any disclosure to the bankruptcy trustee, judge, or creditors. Indeed, the Porteouses subsequently used this credit card in violation of the bankruptcy court's order prohibiting them from accruing new debt.

2. Grand Casino Markers – Records obtained from Grand Casino Gulfport pursuant to a grand jury subpoena indicated that Gabriel Porteous obtained two \$1,000 markers from the casino on February 27, 2001. According to casino and bank records and interviews, Grand Casino Gulfport attempted to deposit the markers, which Judge Porteous had not repaid, in March 2001, but was unsuccessful due to a change in the ownership of Judge Porteous's bank. Casino records further show that Porteous contacted the casino and provided the new bank information before filing his Statement of Financial Affairs. On April 4, 2001, the markers were successfully deposited. Grand Casino Gulfport was therefore fully paid off, in contrast to the creditors included in the bankruptcy, all without any notification to the bankruptcy trustee, judge, or creditors. In addition, as noted above, Judge Porteous subsequently raised his credit limit with Grand Casino Gulfport during the pendency of his bankruptcy.

### D. Undisclosed Gambling Losses

On the Statement of Financial Affairs, Question 8 states, "List all losses from fire, theft other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case." The Porteouses checked the box for "None." However, analyses of casino records indicated that Judge Porteous's gambling losses exceeded \$12,700 during the preceding year, or at least \$5,700 in net losses. According to the trustee, had

he known about the Porteouses' gambling losses he may have scrutinized more carefully the income and expense figures reported by the Porteouses in their filings.

E. Impact of False Statements and Concealed Assets in Bankruptcy

Judge Porteous, in the series of false statements set out above, subverted the bankruptcy court's ability to properly administer his bankruptcy. His use of a false name and his concealment of his gambling losses in the year preceding his bankruptcy prevented the public from learning about the nature of his public bankruptcy and prevented the trustee, court, and creditors from learning a relevant aspect of his financial condition. His false statements about expected tax refunds, bank accounts, his wife's income, and the existence of preferred creditors all concealed from the court income or assets that could have been distributed to creditors in the bankruptcy or been used to calculate the Porteouses' obligations in the event their assets were to be liquidated. The Porteouses filed a Chapter 13 bankruptcy, in which payments to creditors are based on prospective income. Carmella Porteous's income would have been directly relevant to the calculation of income available to repay creditors. Moreover, in order to determine a fair recovery for creditors under Chapter 13, courts compare the amount that a debtor would pay under Chapter 13 with the amount they would pay were the debtor's assets liquidated. The creditors must fare at least as well in Chapter 13 as they would if the assets were liquidated under Chapter 7. Accordingly, depending on how they were treated by the trustee and bankruptcy judge, concealed assets such as the Porteouses' expected tax refund, money in bank accounts, and money paid to preferred creditors (which the court could order repaid and distributed among all creditors) could have affected the comparative liquidation value of his estate, the amount of the monthly payments the Porteouses were required to make, or the percentage of debt the Porteouses were ultimately obligated to repay.

Even if the value of the hidden assets would not ultimately have affected the amount recovered by any individual creditors, Judge Porteous's false statements nonetheless undermined the bankruptcy process generally. "Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate." *In re Yonikus*, 974 F.2d 901, 904 (7th Cir. 1992). This is because allowing debtors "the discretion to not report exempt or worthless property usurps the role of the trustee, creditors, and the court by denying them the opportunity to review the factual and legal basis of debtors' claims." *In re Bailey*, 147 B.R. 157, 163 (Bankr. N.D. Ill. 1992). Judge Porteous's concealment of assets and his filing of a false petition, schedules, and his statement of financial affairs precluded other interested parties from asserting their rights and enjoying a full and fair hearing on any claims they may have made against the estate.<sup>5</sup>

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<sup>5</sup> Despite the evidence recited above, the Department ultimately concluded that it would not seek to charge Judge Porteous with violations of federal criminal law under 18 U.S.C. § 152(1) and (3) (concealed assets and false statements in bankruptcy) and 18 U.S.C. § 401(3) (criminal contempt of court). Several factors informed that decision, including the burdens of proving beyond a reasonable doubt to a unanimous jury the materiality of Judge Porteous's misconduct in the bankruptcy proceeding. The burdens on the government in a criminal prosecution, however, do not apply in judicial misconduct or impeachment proceedings. An



### III. Evidence that Judge Porteous Submitted Additional False and Misleading Statements

The investigation obtained evidence that numerous signed documents filed prior to or contemporaneously with the initiation of bankruptcy on which Judge Porteous had a duty to be truthful -- including government financial disclosure reports, a casino credit application, and a bank loan renewal application -- also contained false or misleading information.

Porteous's financial disclosure report for calendar year 2000, filed with the Administrative Office in May 2001 just over a month after he filed for bankruptcy, failed to list numerous credit accounts he was obligated to disclose, including most of those listed on his bankruptcy documents. Further, on that disclosure report Judge Porteous indicated liabilities of \$15,000 or less on each of two credit cards, while Schedule F to his bankruptcy filings from the same time period reflects that Judge Porteous in fact owed approximately \$196,000 in unsecured debt, most of it credit card debt. Judge Porteous also failed to disclose on his annual financial disclosure forms the travel, cash, and gifts he received while a federal judge from attorneys and others with matters before him, as discussed further below. In addition, Judge Porteous reported "0" indebtedness on an April 30, 2001, credit application filed with Harrah's casino just weeks after he noted in his petition to the bankruptcy court that he had incurred \$196,000 in unsecured debt.

The investigation also uncovered evidence that Judge Porteous intended to mislead Region's Bank about his financial condition in order to ensure that a \$5,000 single-payment loan scheduled to become due shortly before the bankruptcy would be extended and, thus, discharged among other unsecured debts in the bankruptcy. In response to a grand jury subpoena, Claude Lightfoot, the Porteouses' bankruptcy attorney, produced a letter from him to the Porteouses dated December 21, 2000, which discussed additional letters he had sent to all but one of the unsecured creditors that later were included in the bankruptcy. Lightfoot stated, "I enclose a copy of the letters and one copy of the attachments I included with each that I have sent to all of the unsecured creditors, with the exception of Regions Bank which we wanted to exclude, proposing the workout of the debts to each . . . ." (emphasis added). These "workout" letters proposed a 21% payment of the debts the Porteouses owed to each of 13 unsecured creditors "[i]n an effort to provide all of my clients' unsecured creditors with immediate payment now and to avoid the necessity of a Chapter 7 bankruptcy filing." (emphasis added). Region's Bank, to whom the Porteouses owed \$5,000 on an unsecured "single payment" loan scheduled to come due January 13, 2001, was not sent a workout letter, nor was the \$5,000 Regions loan amount included in the schedule of debts provided in the workout letters to other creditors. Another document Lightfoot produced was a list of the Porteouses' creditors and debts that had been prepared by Judge Porteous and his wife, and which Lightfoot used, along with other worksheets, during his efforts to reduce the Porteouses' debts short of bankruptcy as well as in preparing the bankruptcy petition and schedules. That list includes an entry in what has been identified as Judge Porteous's handwriting that states, "Regions Bank \$5000 unsecured loan due 1/13/01."

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impeachable offense is any misconduct that damages the State and the operations of governmental institutions; it is not limited to criminal misconduct.

On January 16, 2001 -- shortly after the workout letters were sent to the unsecured creditors -- Judge Porteous signed an application with Region's Bank to renew his loan and extend the date of repayment on the loan six months. On the application Judge Porteous certified that he was not "in the process of filing bankruptcy" and signed under the acknowledgment that there had been "no material adverse change" in his financial condition "as disclosed in my most recent financial statement to lender." (The relevant loan applications with Region's Bank submitted in January and July 2000 included financial statements, but neither of those statements appears to have been completed.) The loan renewal was approved, and the repayment date was extended to July 17, 2001. The Porteouses then filed their initial voluntary petition for bankruptcy approximately two months later, on March 28, 2001, and the loan from Region's Bank was discharged in the bankruptcy.

The December 21, 2000, letter from their attorney to the Porteouses establishes that Judge Porteous's decision not to disclose his actual financial condition and impending bankruptcy to Region's Bank in the loan renewal application was intentional. Indeed, the letter states that the Porteouses and their attorney decided not to send the workout letter to Region's Bank in particular. As a result, Judge Porteous was able to obtain an extension under the false pretense that his financial condition had not materially worsened and that he was not on the brink of bankruptcy, and was able to include the Region's Bank loan in the bankruptcy even though it was originally set to mature before he filed.

#### IV. Evidence that Judge Porteous Solicited and Accepted Things of Value from Attorneys and Litigants with Matters Before Him

Among the attorneys identified by FBI sources as the group most closely linked to the corruption allegations surrounding Judge Porteous were Donald Gardner, Robert Creely, Leonard Levenson, and Warren Forstall. Each of those attorneys was interviewed or compelled to testify before the grand jury about their financial dealings with the Judge. The evidence obtained from those witnesses shows that Judge Porteous accepted cash, expensive meals, travel, and other benefits from them, gifts that the Judge failed to disclose to the Administrative Office on his annual financial disclosure reports or to litigants and opposing counsel in cases in which those attorneys were engaged. The Department also has obtained evidence that Judge Porteous received unreimbursed travel and sport hunting trips from litigants with matters before him in federal court, also without disclosing his apparent conflicts to interested parties and counsel.

##### A. Cash Payments from Attorneys

Robert Creely and Jacob Amato, who represented clients with matters before Judge Porteous in state and federal court, testified that Judge Porteous solicited and accepted cash payments from them while he was a state and federal judge. According to their testimony, none of the payments occurred after 1999.

Robert Creely is a lawyer in New Orleans, Louisiana. He met Judge Porteous in high school, and practiced at the same firm as Judge Porteous for a year after law school. Creely then left the firm with another local attorney, Jacob Amato. Creely and Amato practiced together in



the law firm of Creely & Amato for 29 years. Creely describes himself as a very close personal friend of Judge Porteous, as does Amato.

Creely testified that, beginning in the late 1980s and early 1990s, while Judge Porteous was a state court judge, he began to solicit cash payments from Creely. Creely and Amato had matters before Judge Porteous in state court at that time. Creely testified that he and Amato would each take draws for half the amount from their joint law firm account. Creely would give that money to Judge Porteous in cash. Creely indicated that Judge Porteous would always ask for the money to pay urgent, unforeseen expenses related to his family. However, Creely stated that Judge Porteous drank and gambled excessively, and Creely was concerned he was paying for the Judge's extravagant lifestyle. Creely testified that, as a result, he eventually told Judge Porteous he could not continue to give him money.

After Creely decided to cut off further payments to Judge Porteous, the Judge began to designate Creely as the curator on executory interests in mortgaged property in actions over which he presided as a state court judge. Creely testified that he received approximately \$175 from the state court system for each curatorship, and that those cases required very little time or effort on his part. In return, Judge Porteous asked Creely for the money he was paid by the court. Creely testified that he paid Judge Porteous in cash the amount he received, minus his minimal costs, which usually involved simply sending a letter and posting public notice of the pending executory actions. Although PACER records indicate Judge Porteous appointed Creely as the representative for an absent party in at least one forfeiture action in federal court -- that is, United States v. Ratcliff, Civ. No. 95-00224 (filed Jan. 19, 1995) -- Creely testified that the kick-back scheme he described came to an end when Judge Porteous moved from state to federal court in 1994. Jacob Amato also testified about the curatorships and stated that he was aware that Judge Porteous asked Creely for money and explicitly tied those payments to the many cases in which the Judge appointed Creely as a curator.

Creely testified that, in May 1999, Judge Porteous once more asked his law partner, Jacob Amato, for a payment of \$2,000, this time to help defray the cost of a wedding for one of his children. This request was made while Amato was counsel on the Liljeberg matter, a multi-million dollar civil action pending before Judge Porteous in federal court, described further below. Jacob Amato also testified about that request for money from Judge Porteous. Amato gave Porteous the money he asked for in cash, again splitting the payment with Creely through personal draw-downs from their law firm account. Creely testified that Judge Porteous has not solicited, and he has not given him, any additional cash since the May 1999 payment of \$2,000. Creely testified that Judge Porteous instructed him to give the cash to his secretary, Rhonda Danos, who would pick it up from his office. Creely says he put the money in a sealed envelope and gave it to Danos. Danos testified that she does not recall receiving an envelope with cash in it, although she stated that she did pick up items from time to time for the Judge from Creely's office.

Jacob Amato corroborated Creely's claims that they made cash payments to Judge Porteous both while he was a state and a federal judge. Between them, Creely and Amato represented parties in four actions over which Judge Porteous presided on the federal bench

according to the PACER electronic court records system.<sup>6</sup> Creely testified that in total they may have given Judge Porteous as much as \$10,000 over time.

Donald Gardner is also an attorney in New Orleans, Louisiana and a close personal friend of Judge Porteous. Although Gardner testified he does not gamble often, he stated that on occasions when he was at casinos with Judge Porteous, the Judge would ask for money to gamble, and he would give it to him. Gardner testified Judge Porteous would request amounts in the range of \$100 to \$200. He also testified that he provided Judge Porteous approximately \$200 to purchase a gift for his wife. Gardner also paid \$300 to a contractor on behalf of Judge Porteous. Gardner testified that his payments to or on behalf of Judge Porteous occurred prior to him taking the federal bench. According to Gardner, he estimated that over the course of their friendship he did not give Judge Porteous more than \$3,000 in total. Although the FBI developed sources who believed that Gardner regularly paid Judge Porteous, the investigation was ultimately unable to disprove his testimony about the extent of his cash payments to Judge Porteous.

In addition to cash payments to Judge Porteous, several attorneys testified that they gave money to his secretary, Rhonda Danos, to help support Judge Porteous's son during his externship in Washington, D.C., while Judge Porteous was a federal judge. Leonard Levenson is another local attorney who has been friends with Judge Porteous since the early 1980s. Levenson testified that, although he never gave cash directly to Judge Porteous, he may have contributed a few hundred dollars to Rhonda Danos to be used for Judge Porteous's son's externship. Don Gardner also testified that he gave a couple hundred dollars for the externship.<sup>7</sup>

**B. Travel, Meals, and Hunting and Fishing Trips from Lawyers and Litigants**

The investigation of the FBI into alleged judicial corruption also led to the discovery of evidence that, on a regular basis, Judge Porteous accepted gifts of travel, expensive meals, drinks, and hunting and fishing trips from attorneys and businesses with matters before him both in state and federal court, and that Judge Porteous failed to disclose his receipt of those benefits to interested counsel and litigants and, for all but two hunting trips, in his financial disclosure reports to the Administrative Office.

Several attorneys who were compelled to testify admitted that they paid for travel for Judge Porteous. In May 1999, Judge Porteous and several others traveled to Las Vegas, Nevada for his son's bachelor party. Credit card records and Caesar's Hotel records indicate that Robert

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<sup>6</sup> See In re. Liljeberg Enters. Inc., Civ. No. 93-01794 (filed June 01, 1993); United States v. Ratcliff, Civ. No. 95-00224 (filed Jan. 19, 1995); Buck v. Candy Fleet Corp., Civ. No. 97-01593 (filed May 16, 1997); and Union Planters Bank, N.A. v. Gavel, Civ. No. 02-01224 (filed Apr. 24, 2002).

<sup>7</sup> Gardner also testified that he, like Creely, was designated by Judge Porteous as a curator in numerous state cases then pending before the Judge. He claimed, however, that the Judge never asked for money in connection with those appointments.



Creely paid \$421.90 with his credit card for Porteous's room from May 20 to May 23, 1999. Judge Porteous's credit card records indicate that he took out more than \$5,000 on his credit cards at Caesar's Hotel during the trip. Caesar's Hotel records estimate that Judge Porteous lost \$1,200 gambling over the course of his stay. Judge Porteous's bank records indicate that he deposited \$5,000 into his money market account days after he returned from the trip. The source of that money is unknown. Don Gardner, the New Orleans attorney representing the opposing party in the Liljeberg cases that were then pending before Judge Porteous, also attended the May 1999 Las Vegas bachelor party trip.

In grand jury testimony and an interview with the FBI, Robert Creely admitted that he attended the bachelor party trip, but did not recall paying for Judge Porteous's room. He said that he and two other non lawyers present on the trip also split the bill for an expensive steak dinner for many of the people in attendance, including Judge Porteous. He claimed that he did not give Judge Porteous any money during or immediately following that trip.

Robert Creely also testified that he has taken Judge Porteous on many fishing trips over the years, including while Judge Porteous was a federal judge, and on two or perhaps three hunting trips while Porteous was on the state bench. Creely valued the hunting trips at the time at around \$1,500 per person plus airfare, all of which he covered on Judge Porteous's behalf. Judge Porteous never covered any of the costs related to the hunting or fishing trips.

Warren Forstall, Jr. is a lawyer who practices in New Orleans, Louisiana. He and Judge Porteous have been friends for about 20 years. Forstall testified that in September 1999, at Judge Porteous's invitation, Forstall purchased tickets for both of them to San Francisco to attend an attorney conference together. They later cancelled the trip, and Forstall did not know what became of the ticket he purchased for Judge Porteous. Credit card and travel agency records for Forstall show that he paid \$238 with his credit card for the airline tickets for Judge Porteous to San Francisco on September 18, 1999, with a return flight from Reno-Tahoe to New Orleans on September 22, 1999, along with an accompanying ticket for himself. Travel records indicate that Judge Porteous traded his California plane ticket for a ticket to Las Vegas in October 1999. Judge Porteous failed to disclose his acceptance of an airline ticket from Forstall on his financial disclosure forms or in any litigation in which Forstall had an interest.<sup>8</sup>

In an interview with the FBI, Leonard Levenson stated that he has paid for hunting trips with Judge Porteous both while the Judge was on the state and federal bench. In October 1999, Levenson and his wife accompanied Judge Porteous to Las Vegas, Nevada. Porteous obtained his airfare for that trip by trading in the unused ticket to San Francisco that he previously had obtained from Warren Forstall. Judge Porteous's secretary, Rhonda Danos, paid for the

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<sup>8</sup> The Court's PACER records indicate that Forstall's firm represented parties in at least six federal actions before Judge Porteous. See Everage v. Fisher, Civ. No. 98-00451 (filed Feb. 11, 1998); McAfee v. Ayers, Civ. No. 98-01415 (filed May 12, 1998); Ford v. United States Postal Serv., Civ. No. 98-02170 (filed July 24, 1998); Wingate v. Brock, Civ. No. 98-03290 (filed Nov. 6, 1998); Coleman v. United States Postal Serv., Civ. No. 99-02017 (filed June 30, 1999); and Minnifield v. Drug Trans. Inc., Civ. No. 02-02516 (filed Aug. 13, 2002).



Levensons' airfare, and was reimbursed by them in November 1999. Levenson has been counsel in at least eleven matters over which Porteous presided in federal court.<sup>9</sup> It does not appear that Judge Porteous provided notice to any party of his acceptance of gifts and benefits from Levenson.

According to evidence obtained from attorneys who were interviewed or testified before the grand jury, Judge Porteous also made it his regular practice to receive gifts of meals and drinks at expensive restaurants from lawyers with matters before him while he was a judge in both state and federal court. Robert Creely, Jacob Amato, Leonard Levenson, Donald Gardner, and Warren Forstall all admitted that they frequently bought meals for Judge Porteous that he did not reimburse. Creely testified that Judge Porteous always expected that the lawyers would pick up the tab, and that the Judge would never offer to pay. Ronald Bodenheimer, a former 24th JDC judge who agreed to be interviewed and testify after pleading guilty to honest services fraud in connection with the investigation of judicial corruption in the 24th JDC, stated that when he was elected to the state bench, Judge Porteous told him that since he was a judge he would never again need to pay for his own lunch. Each of the attorneys who routinely bought meals for Judge Porteous had matters before him both in state and federal court. Judge Porteous apparently never disclosed to any litigant or counsel his receipt of benefits from these lawyers, nor did he disclose any meals valued over \$100 in any financial disclosure report filed with the Administrative Office.<sup>10</sup>

The FBI and other investigative agencies also have obtained evidence that, on at least three occasions, Judge Porteous accepted free travel and hunting trips from the Rowan Company and Diamond Offshore. Rowan and Diamond are each frequently named as defendants in maritime actions brought in the Eastern District of Louisiana and, on many occasions, in actions assigned to Judge Porteous. The hunting trips included free air transportation by private plane from New Orleans, Louisiana to Falfurrias, Texas, and sport hunting on property owned or

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<sup>9</sup> See In re. Liljeberg Enters. Inc., Civ. No. 93-01794 (filed June 01, 1993); In re. Owen McManus, Civ. No. 95-01615 (filed May 23, 1995); Alliance General Ins. Co. v. Louisiana Sheriff's Auto. Risk Prog., Civ. No. 96-00961 (filed Mar. 15, 1996); First Nat'l Bank v. Evans, Civ. No. 96-01006 (filed Mar. 20, 1996); Joseph v. Sears Roebuck & Co., Civ. No. 97-00192 (filed Jan. 21, 1997); Siddiqui Group Enters., Inc. v. Shell Oil Co., Civ. No. 98-00606 (filed Feb. 26, 1998); Liberty Mutual Fire Ins. v. Ravannack, Civ. No. 00-01209 (filed Apr. 19, 2000); Holmes v. Consolidated Cos., Inc., Civ. No. 00-01447 (filed May 17, 2000); Loehn v. Hardin, Civ. No. 02-00257 (filed Jan. 30, 2002); Salatich v. America Online Inc., Civ. No. 03-02943 (filed Oct. 21, 2003); and Morales v. Trippe, Civ. No. 04-02483 (filed Aug. 31, 2004).

<sup>10</sup> For example, although it is difficult to reconstruct the record with certainty, Amato's financial records and testimony indicate that he may have spent at least \$1,500 in 1999 and \$2,250 in 2000 for dining and beverage expenses at restaurants at which he entertained Judge Porteous. Judge Porteous was required to report to the Administrative Office gifts of food and drink valued at more than \$100 on his annual financial disclosure reports. However, Judge Porteous has never reported the receipt of any gift from Amato or any other attorney with matters before him.

controlled by Rowan near the Mariposa Ranch in Falfurrias. The government has also obtained evidence that Judge Porteous traveled from the Falfurrias camp by private plane to a similar hunting camp near San Antonio, Texas owned or controlled by Diamond. Further evidence indicates that, on at least one of the trips paid for by Rowan, Judge Porteous was accompanied on the trip by litigation counsel for Rowan.<sup>11</sup>

Judge Porteous disclosed two of these hunting trips in financial disclosure reports filed with the Administrative Office. On his report for calendar year 2004, filed May 12, 2005, in response to Part V, "Gifts," Judge Porteous reported that he received a hunting trip from Rowan Company, for which he reported a fair market value of \$1,000. On his report for calendar year 2005, filed July 24, 2006, in response to Part V, "Gifts," Judge Porteous reported that he received a hunting trip from Diamond Offshore, which he also valued at \$1,000. Judge Porteous has yet to file his financial disclosure report for calendar year 2006. Judge Porteous's reports appear to understate the fair market value of the hunting trips. Evidence indicates that the cost to operate the private plane used to transport Judge Porteous to Falfurrias, Texas itself was approximately \$1,000 an hour. According to commercial sports hunting locations in the same area, the fee for merely observing a hunt is approximately \$200 a day in addition to the cost of the full hunting package for the other hunt participants, while the fee to participate in a Whitetail Buck hunt, which evidence shows was the subject of at least one of the hunting trips, would cost approximately \$3,000 to \$3,500 per participant. Together, the evidence suggests the total fair market value for each hunting trip would have been in excess of the \$1,000 reported by Judge Porteous.

In addition to apparently understating the fair market value of his trips on financial disclosure reports submitted to the Administrative Office, Judge Porteous apparently failed to disclose his receipt of the trips to counsel and parties adverse to Rowan and Diamond in the actions over which he presided. The Court's PACER electronic records system indicates that, since the late 1980s, the Rowan Companies, Inc. and its related companies have been parties in more than a hundred cases filed in the Eastern District of Louisiana. Judge Porteous has presided over at least six such actions.<sup>12</sup> Of those cases, Hanna was an open matter during all of 2004, and therefore was pending when Judge Porteous received a hunting trip from Rowan. About one week after returning from his January 2006 trip with Rowan, he was assigned to preside over the Thomas matter. Despite his obligation to do so, Judge Porteous apparently failed to disclose the benefits he received from Rowan to counsel and the opposing parties in each of those cases.

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<sup>11</sup> There is evidence that one other federal district judge attended at least one of the hunting trips Rowan sponsored.

<sup>12</sup> See Lucas v. Tetra Technologies, Civ. No. 96-03501 (filed Oct. 28, 1996); Grubb v. Rowan Companies, Inc., Civ. No. 00-01075 (filed Apr. 10, 2000); Hoffman v. Rowan Companies, Inc., Civ. No. 01-01285 (filed Apr. 27, 2001); Hanna v. Rowan Company, Inc., Civ. No. 03-03285 (filed Nov. 21, 2003); Thomas v. Rowan Companies, Inc., Civ. No. 06-00166 (filed Jan. 13, 2006); and Cooley v. Crescent Drilling & Production, Inc., Civ. No. 06-01427 (filed Mar. 20, 2006).



Likewise, Diamond and its related companies were frequent litigants in the Eastern District of Louisiana, also parties in more than a hundred actions filed since the early 1990s. According to the PACER system, Judge Porteous presided over seven matters in which Diamond was a party.<sup>13</sup> Of those seven, Johnson was pending for part of, and Jones during all of 2005, the year in which Diamond provided Judge Porteous one of the trips according to Judge Porteous's financial disclosure report. The docket in each case does not reflect that Judge Porteous provided notice to the parties or counsel of the trip he received from Diamond.

C. Effect of Judge Porteous's Misconduct on the Administration of Justice

Judge Porteous's apparent misconduct has had a derogatory effect on the administration of justice in the Eastern District of Louisiana. That impact can be illustrated by the effect his conflicts had specifically on the litigation surrounding the Chapter 11 bankruptcy filing of Liljeberg Enterprises, Inc., and the cloud of suspicion those undisclosed conflicts raised about the validity of Judge Porteous's rulings in that matter. See In re Liljeberg Enterprises, Inc., Civ. Nos. 93-1794, 93-4249, 95-2922, and 94-3993. The bankruptcy action was commenced in 1993, and the matter was transferred and consolidated with related cases before Judge Porteous on January 16, 1996. On September 19, 1996, after Judge Porteous's assignment to the litigation and just weeks before the complex matter was scheduled to be tried to the bench, Liljeberg Enterprises moved to substitute Jacob Amato and Leonard Levenson as counsel of record. Judge Porteous signed the order granting the substitution on September 23, 1996. Amato handled the representation of Liljeberg on behalf of the Creely & Amato law firm. Levenson testified that he was told when he was hired by Liljeberg that he was being retained for strategy and assistance during the trial of the matter. However, based on recent public statements made by his client, Levenson now believes that his apparent close relationship with Judge Porteous influenced his client to hire him. Jacob Amato testified that he also believed his connection to Judge Porteous played a role in his client's decision to engage him.

One of several parties adverse to Liljeberg in these actions was LifeMark Hospitals, Inc. After Amato and Levenson were retained by Liljeberg, Lifemark in turn sought to associate a long-time friend of Porteous, Donald Gardner.

Gardner testified that he did not have experience handling federal litigation matters, and that Lifemark had competent local counsel. Gardner stated that the reason he was asked to associate himself on the case was his known relationship with Judge Porteous. LifeMark's counsel, Joseph Mole, testified that he hired Gardner because his client believed it was necessary to "level the playing field" following the retention by Liljeberg of Amato and Levenson – whose close connections to Judge Porteous were also well known among local attorneys. Indeed, prior

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<sup>13</sup> See Pierce v. Diamond Offshore, Civ. No. 98-01661 (filed June 4, 1998); Gonzalez v. Diamond Offshore, Civ. No. 99-00815 (filed Mar. 11, 1999); Sylve v. Oceaneering Int'l, Inc., Civ. No. 99-00841 (filed Mar. 15, 1999); Dillon v. Diamond Offshore, Civ. No. 99-02026 (filed June 30, 1999); Farrar v. Diamond Offshore Co., Civ. No. 03-00782 (filed Mar. 19, 2003); Johnson v. Diamond Offshore, Civ. No. 03-02505 (filed Sept. 4, 2003); and Jones v. Diamond Offshore, Civ. No. 04-00922 (filed Mar. 31, 2004).

to hiring Gardner, counsel for LifeMark filed a motion seeking Judge Porteous's recusal because of the appearance of partiality created by the close personal relationship among Porteous, Amato, Creely, and Levenson. LifeMark's counsel testified that he was not aware that Porteous had received cash payments from Amato or his partner Creely, and trips and other benefits from Amato, Creely, and Levenson. He testified that, had he known about those dealings, he would certainly have included that information in his motion to recuse. Judge Porteous denied the motion. In his opinion, Judge Porteous failed to disclose his solicitation and acceptance of cash, travel, and other things of value from Amato, Creely, and Levenson. Counsel for LifeMark filed a mandamus action with the Fifth Circuit, but the Circuit denied LifeMark's requested relief as well -- also without being informed of Judge Porteous's financial dealings with Liljeberg's counsel. Amato testified that his and his partner's gifts of cash and other benefits to Judge Porteous were never disclosed in the litigation, and admitted that they "probably" would have been a basis for recusal. As noted, three years later, while Liljeberg was still pending before him, Judge Porteous again solicited and received \$2,000 in cash from Creely and Amato, which Porteous also failed to disclose to the counsel or litigants in the Liljeberg action, as well as the Administrative Office.

The written fee agreement between Gardner and LifeMark provided that Gardner would be paid a \$100,000 flat fee for associating himself on the case. The agreement included a provision that, if the case was transferred to another judge, Gardner's engagement would end, but he would be paid an additional \$100,000 severance. The fee agreement also contained a sliding-scale of additional fees contingent on various measures of LifeMark's success at trial. According to LifeMark's lead counsel, Joseph Mole, he included that contingent fee component to create an incentive for Gardner to deal honestly with LifeMark and not collude with Amato and Levenson. Mole saw Gardner as part of a circle of friends surrounding Judge Porteous, a circle that included opposing counsel Amato and Levenson. When asked whether Gardner was expected to give any part of his fee to Judge Porteous, both Gardner and Mole testified that he was not. Both also testified that Gardner informed LifeMark up front that he would not be able to influence Judge Porteous to do anything unethical or improper.

Mole testified that Gardner was retained solely because of his close relationship with Judge Porteous, and that his only active role in the case was to attend the bench trial. Gardner testified that he offered advice on how he thought Judge Porteous might react to LifeMark's evidence and strategies, but that counsel for LifeMark disregarded most of that advice. When questioned about the perceived need to pay \$100,000 -- and potentially many hundreds of thousands more -- to an attorney who had no relevant federal experience but who was a friend of the Judge so that he would file an appearance and observe the bench trial, Mole testified that he thought his client was a victim of a broken system.

The non-jury trial before Judge Porteous commenced June 16, 1997 and continued with breaks over several weeks until July 23, 1997. Following the bench trial, Judge Porteous failed to rule for nearly three years. During the time that Judge Porteous's judgment was pending, the evidence reflects, as recounted above, that Judge Porteous asked for and received cash payments



from Creely and Amato, and was the beneficiary of numerous meals, trips, and other gifts from Creely, Amato, Levenson, and Gardner.<sup>14</sup>

On April 26, 2000, Judge Porteous ruled in favor of Amato and Levenson's client, Liljeberg Enterprises, Inc., on most of the important contested issues.<sup>15</sup> Porteous's ruling in favor of Liljeberg was partially reversed by the Fifth Circuit in an unusually critical opinion. Regarding Porteous's finding that LifeMark had breached a fiduciary duty it owed to Liljeberg by, among other things, failing to reinscribe a collateral mortgage and mitigate harms caused by not doing so, the Circuit excoriated Judge Porteous:

... The extraordinary duty the district court imposed upon LifeMark ... is inexplicable. ...

... The right of LifeMark to unilaterally release any part of the property from the mortgage is wholly at odds with the district court's discovery of a "duty" to reinscribe the collateral mortgage. ...

... [Judge Porteous's theory that LifeMark consequently owed a duty to mitigate] is a mere chimera, existing nowhere in Louisiana law. It was apparently constructed out of whole cloth.

In re Liljeberg Enters., Inc., 304 F.3d 410, 428-29 (5th Cir. 2002). Similarly, in finding that Judge Porteous clearly erred in his ruling that the judicial sale of the hospital must be overturned in favor of Amato and Levenson's client, Liljeberg, the Court censured the unsupported conclusions drawn by the Judge:

... the district court's findings of a "conspiracy" to wrest control of the hospital and medical office building from St. Jude and Liljeberg Enterprises border on the absurd. ...

The district court's "conspiracy theory" conclusion is based, in part, on the view that Liljeberg Enterprises's or St. Jude's losses were caused by Lifemark. ...

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<sup>14</sup> On May 28, 1999, Judge Porteous granted summary judgment in favor of Levenson's client in Alliance Gen. Ins. Co. v. Louisiana Sheriff's Auto. Risk Prog., Civ. No. 96-00961.

<sup>15</sup> According to American Express credit card records, Amato paid \$130 at Commander's Palace -- a fine dining restaurant in New Orleans -- on April 25, 2000, the day on which Judge Porteous signed his long-pending judgment in favor of Amato's client. The judgement was filed on the docket on April 26, 2000. Amato has informed the government that Rhonda Danos, Porteous's secretary, was present with him at Commander's Palace on April 25, 2000, and that he paid that bill. Danos testified that the pending judgment was not discussed during the April 25, 2000 rendezvous at Commander's Palace, that she never received any cash or bribe from Amato, and that the timing of her meeting with Amato at Commander's Palace on the day the judgment was signed was a coincidence.

These findings turn on the remarkable but largely implicit conclusion . . . that, under Louisiana law, a second mortgagee . . . cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.

Id. at 431.

V. Evidence that Judge Porteous Accepted Things of Value from Bail Bonds Unlimited and Louis and Lori Marcotte in Exchange for Access and Assistance

Louis and Lori Marcotte operated Bail Bonds Unlimited, a bail bonds company with business before the 24th JDC. As a result of the FBI investigation into corruption in the 24th JDC, both Louis and Lori Marcotte pleaded guilty to bribing Louisiana state judges in addition to other offenses. In interviews following their guilty pleas, the Marcottes said they paid for expensive meals, trips, and other benefits for Judge Porteous in exchange for favorable treatment when he was a state judge in the early 1990's, and that they continued to pay for meals while he was a federal judge. The Marcottes estimated the cost of weekly Friday lunches they provided for Judge Porteous and his staff and other invitees at about \$500 each. They also stated that they paid for innumerable additional meals and drinks at expensive restaurants that cost hundreds of dollars each. In addition, the Marcottes said they paid for numerous car repairs for Judge Porteous and his family, paid for a fence to be built for him, gave parking privileges to Porteous's son at their office near the courthouse, and provided business to his son's legal courier service.

Other witnesses confirm that Louis Marcotte did numerous favors for and gave many gifts to Judge Porteous while he was a state court judge. Former Marcotte employees say that Marcotte paid for car repairs for Judge Porteous and a fence for Judge Porteous' house. Other witnesses report that Marcotte paid for many meals for Judge Porteous and at least one trip to Las Vegas, Nevada for Judge Porteous. Additional sources report, and the FBI in one instance observed, that Louis Marcotte continued to take Judge Porteous out for meals when he was a federal judge.

In 1992, the Marcottes invited Judge Porteous to Las Vegas with them, but he was unable to attend. Several months later, around August 1992, Rhonda Danos called the Marcottes to inform them that Judge Porteous "was ready to go" to Las Vegas with them. The Marcottes and two local attorneys paid to take Judge Porteous and another state judge to Las Vegas. Danos booked the trip on her credit card and then sought reimbursement from Louis Marcotte. The Marcottes stated that the arrangement was designed to disguise the fact that they and other lawyers were paying for the trip. They also stated that they invited the other attorneys and judge to provide cover for Judge Porteous.

In July 1999, the Professional Bail Agents of America paid \$206.80 for lodging for Judge Porteous at their conference at the Beau Rivage in Biloxi, Mississippi. Judge Porteous spoke at the conference. Judge Porteous did not report this payment on his financial disclosure form (there is no minimum value for required reporting of travel reimbursements). The charge for Porteous's lodging was paid by the PBAA out of its "master account." In turn, the Marcottes



made a \$7,000 contribution to cover expenses on that master account. The Marcottes also provided the PBAA with a list of people whose charges should be credited against the Marcotte's credit card. That list included Porteous's secretary, Rhonda Danos.

The Marcottes asserted that they also paid for Porteous's secretary to go to Las Vegas, Nevada for many years with them when they were attending annual bail bonding conventions there. This began in 1992 and continued through the first few years Judge Porteous was a federal judge. The Marcottes have provided the FBI with pictures that show the Judge's secretary in their company in Las Vegas. They claimed that they covered all of Danos's costs during the trips. For several years, the Marcottes also provided Danos and Judge Porteous with five to ten tickets each year to an annual police fund-raising party, valued at \$100 per ticket. The expenses borne by the Marcottes on behalf of the Judge's secretary tend to corroborate their claim that they provided gifts to Judge Porteous in exchange for access. The Marcottes explained that Danos was the gatekeeper for access to Judge Porteous, and that it was therefore essential to their purpose that they kept Danos happy by plying her with gifts as well.

According to the Marcottes, in exchange for their generosity with Judge Porteous and Danos, while Judge Porteous was a state court judge, he gave the Marcottes immediate access to him on bonding whenever they needed him. The Marcottes say he granted most of their requests. Louis Marcotte told the FBI that Judge Porteous was more likely to grant a problematic request after a lunch or a car repair. Judge Porteous also made introductions for the Marcottes to other state judges and lent his support by vouching to other judges that Louis Marcotte was a good person to deal with on bond issues. He also spoke to other state judges about the benefits to the court system of split bonds, a practice that was extremely beneficial to the business of Bail Bonds Unlimited. Following his own agreement to plead guilty to honest services fraud and to cooperate with the government, former 24th JDC judge Ronald Bodenheimer corroborated much of what the Marcottes told the FBI concerning the assistance Judge Porteous provided around the courthouse for their business interests in the 24th JDC.

In addition to making himself accessible and assisting the Marcottes on bonding matters, at Louis Marcotte's request Judge Porteous expunged the felony convictions of two Marcotte employees shortly before Judge Porteous left the state bench in 1994. This permitted the employees to work for the Marcottes in the bail bonding business, which otherwise was prohibited under Louisiana law. It appears that Judge Porteous decision to expunge the convictions was contrary to law. Nonetheless, Porteous claimed in an interview with the New Orleans Metropolitan Crime Commission that an Assistant District Attorney was present during the hearing and failed to object on the record. Even if true, there is no indication that the Assistant District Attorney was aware that Porteous was the recipient of a stream of things of value from the Marcottes, all of which the Marcottes claim they provided with the specific intent to influence Judge Porteous.

Although the Marcottes have made many allegations of improprieties involving Judge Porteous, they have pleaded guilty to charges of extensive fraudulent conduct. They also admit that they never obtained an explicit agreement with Judge Porteous that he would grant bond requests in exchange for favors. They claim instead that the agreement was implicit in the

relationship, and that the Judge knew very well why they lavished him and his long-time secretary with food, drinks, trips, favors, and other things of value.

#### VI. Further Circumstantial Evidence that Judge Porteous Engaged in Corrupt Activities

The investigation has uncovered large amounts of unexplained cash being deposited in Judge Porteous's accounts. Financial records reveal that Judge Porteous deposited more than \$57,000 in cash into his checking account between 1998 and 2000. Additional records received from Fidelity Homestead Association show that five separate deposits of currency totaling approximately \$20,000 were also made into the Judge's money market account from 1998 to early 2000. This account was not reported on Judge Porteous's bankruptcy petition. In addition, one of the deposits, made two days after Judge Porteous returned from his Las Vegas trip, was in the amount of \$5,000, roughly the amount he withdrew over the "bachelor party" weekend, despite casino records that estimated a \$1,200 loss during that trip.

In addition, the investigation has revealed that Judge Porteous's secretary, Rhonda Danos, paid for many of his expenses from her own bank account. While Judge Porteous did write checks to her, the FBI was not able to establish that he fully reimbursed her. In 1999 and 2000, for example, Danos paid \$41,621.15 for credit card bills and other expenses for Judge Porteous; during the same period, she received \$32,554.51 in checks from him. Over the same two year period, Danos also made \$60,027.80 in cash deposits, a greater sum than her payroll and other sources of income for the same period. Focusing on year 1999 in particular, her financial records indicate that she may have received as much as thirty to forty thousand dollars in unexplained deposits. In addition, in her testimony about her 1999 financial activities, Danos could not account for nearly ten thousand dollars in excess of her admitted sources of income that year, even giving her the benefit of dubious, post-hoc explanations for some sources of funds. Together, these facts evidence that Danos -- on whom Judge Porteous relied for payment of many of his own expenses -- received additional, unexplained cash during the period that the judgement in Liljeberg was pending. Indeed, the Marcottes stated in interviews with the FBI that Danos was used specifically to disguise their payments in connection with the 1992 trip to Las Vegas for Judge Porteous.

#### VII. Evidence that Judge Porteous Is Incompetent to Serve

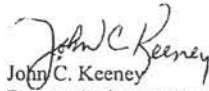
During the course of this investigation the Department has learned that Judge Porteous has obtained the reports of medical examiners concluding that he is incompetent to render decisions as a federal judge because of permanent mental and psychological impairments. In correspondence with Your Honor, Judge Porteous stated that he believes he no longer can meet the responsibilities that fall to him as a judge, and that the reports of a psychologist and psychiatrist confirm that every day he sits on the bench is a disservice to his fellow judges, to the parties who appear before him, and to the people of this country who put their trust in the judiciary. This mental impairment follows a history of alcoholism and reckless gambling, demonstrated in financial records and attested to by witnesses with whom he has had personal relationships. Therefore, in addition to the many allegations of judicial misconduct recited above, Judge Porteous's self-professed inability to render competent and fair decisions as a federal judge and the chronicle of his reckless and dishonorable personal behavior while on the

federal bench also serve as a basis for possible disciplinary action by the Court or referral to Congress for impeachment.

#### CONCLUSION

As noted earlier, issues of statute of limitations, the materiality of the alleged false statements, the government's twin burdens of proof and unanimity at trial, and the availability of alternative remedies persuaded the Department that criminal prosecution was not warranted. The results of the FBI's investigation into allegations of misconduct concerning Judge Porteous, however, raise serious doubts about his suitability for office under the constitutional standard of good behavior on which that service is contingent. The instances of Judge Porteous's dishonesty in his own sworn statements and court filings, his decade-long course of conduct in soliciting and accepting a stream of payments and gifts from litigants and lawyers with matters before him, and his repeated failures to disclose those dealings to interested parties and the Court all render him unfit as an Article III judge. Based on the evidence of pervasive misconduct described herein, the Department respectfully submits this complaint for any further action Your Honor may deem warranted.

Sincerely,

  
John C. Keeney  
Deputy Assistant Attorney General  
Criminal Division  
United States Department of Justice